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**Evaluation of the Rule of Law Program in Central and
Eastern Europe and the New Independent States: The
American Bar Association/Central and East European
Law Initiative (ABA/CEELI) - Final Report**

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EXECUTIVE SUMMARY

I BACKGROUND AND CONTEXT

A Background

The evaluation of the ABA/CEELI Rule of Law program was conducted by a 4-person team consisting of development and legal experts. The team was assembled at the request of the USAID ENI Bureau by Management Systems International, Inc (MSI). The Scope of Work (SOW) for the evaluation (Annex A), which was prepared by USAID with substantial input from CEELI, required the team to conduct a program evaluation of all 22 countries where CEELI has worked, from 1992 to present, with emphasis on six countries selected for site visits: Russia, Ukraine, Georgia, Bosnia and Herzegovina (BiH), Macedonia, and Poland. Two abbreviated site visits to Latvia and Lithuania were ultimately added to the itinerary to provide a closer look at CEELI's work with Judicial Training Centers. Interim country reports for the six primary countries were submitted by the MSI team. Comments in response to each report have been received by ABA/CEELI, and by USAID missions in response to two of the reports. The country reports are attached as Annex B to this report.

B Context

Variables associated with country context proved to be a critical factor in CEELI's strategy and success in each country visited. Among the relevant conditions noted by the team were the political commitment for democratic reform, size and diversity of the country, the pace of free-market economic development, including the degree of foreign investment and political interest, and USAID strategies, frameworks, and perceptions about CEELI. Each country report provides a more complete discussion of individual country conditions that have influenced or affected CEELI programs.

II PROGRAM IMPACT

A The CEELI Program

CEELI's evolution as a rule of law program is marked by two distinct phases. In the early years, from roughly 1992 to 1995, CEELI aimed to mobilize American lawyers and other legal experts to provide timely assistance to newly independent countries. During this phase, CEELI's program focused on educating and organizing legal reformers, as well as identifying partners with whom CEELI could build long-term relationships. The second and current phase, beginning about 1995-96, is characterized by long-term strategies for strengthening the institutional capacity of local partners, such as judges' associations, lawyers' associations, legislative reformers, and special interest groups, to advance their own reform objectives with support from CEELI.

CEELI's objectives have been jointly developed by CEELI and USAID, and fall under broad legal reform Strategic Objectives (SOs), other democracy and governance SO's, or economic growth

SO's Although workplan objectives and activities vary by country, common themes that track CEELI's major program areas are seen in most countries Given the modest level of resources mobilized by CEELI and the substantial need for legal reform and modernization in all CEE/NIS countries, the team concluded that objectives have been appropriately stated

B. Program Findings

The team concludes that CEELI has met, or has made substantial progress towards meeting, its stated objectives at the country and program level Partners and clients consistently praised CEELI's contribution for being responsive, entrepreneurial, effective, and appropriate Common themes heard among interviewees included the quality and commitment demonstrated by liaisons, the highly relevant expertise of CEELI short-term legal specialists and consultants, and the importance among host-country clients of the association with the ABA

Highlights of program impact follow

1 CEELI has contributed to stronger and more independent judiciaries by

- Educating judges and others through intensive and relevant workshops and seminars on issues related to judicial reform,
- Making judicial associations institutionally stronger, more educated, and therefore more empowered to promote judicial independence,
- Establishing and developing judicial training centers, with complex institutional structures, that are now on the road to sustainability,
- Leading initiatives to introduce judicial qualifying procedures that are seen as models in the region

2 CEELI has successfully helped develop independent professional legal associations, despite resistance and obstacles In some countries, due to local conditions, CEELI has focused on forging partnerships with progressive professionals at regional levels or those associated with special interests, such as women, commercial lawyers, or law students

3 CEELI has successfully organized and implemented continuing legal education (CLE) programs that are highly praised for their publications and materials, teaching methodologies and models, and integration of American and European concepts into host-country contexts Results from CEELI's CLE programs include

- Extensive training activities have directly reached more than 7,500 members of the legal profession through more than 256 major events, such as workshops, conferences, conventions, and study tours (in addition to scores of smaller seminars or lectures)
- Participants and clients consistently give CEELI an excellent rating for the benefits provided by such activities, and cite enhanced skills, improved attitudes, and a stronger sense of confidence in their professional abilities as a result of CEELI CLE programs

- CEELI has had variable success in establishing indigenous CLE programs that are likely to be sustained by host-country partners and clients, using CEELI tools and teaching methodologies

4 Stimulating reform in formerly Soviet law schools, while a worthy objective, has proven so far to be mostly unattainable, and USAID and CEELI have appropriately minimized such objectives in most cases. Indeed, legal education reform has not been a priority funding area for USAID. Despite such obstacles, however, CEELI's perseverance in this area has produced results; it has successfully educated and organized reform-minded faculty members and law students, through training efforts, sister city programs, the establishment of law clinics (at least eight have been started), and law student associations.

5 CEELI's legislative assistance program, the initial intent of which was to provide advice and assistance in the early stages of legislative and constitutional reform, has been well received. It has mobilized several thousand American and European legal experts to provide well-organized, timely, and high-quality consultations. The direct impact of legislative assessments appears to be most effective when host-country requesters provide input and request follow-through from CEELI, and when CEELI liaisons remain closely engaged in the process.

6 CEELI commercial law programs have been limited to those countries where USAID missions have recognized the important linkage between rule of law reform and commercial law development. Successful commercial law efforts have been implemented through a popular and widespread CLE program in Russia, through establishment of a Commercial Law Center in Poland, through assistance in the development of codes, and provision of training in other countries.

7 Special USAID approved initiatives, such as the Environmental Public Advocacy Centers (EPACs) in the Western NIS, assistance to the Russian jury trial initiative, women and law programs in several countries, and constitutional assistance efforts in several countries demonstrate one of CEELI's key strengths: targeting special needs, mobilizing experts, and forging partnerships with reformers to generate movements for change. Several of these efforts are also significant because they serve as examples of successful programs that facilitate linkages between rule of law and other policy concerns. The EPACs, covered extensively in the Ukraine Country Report (Annex B), is a particularly impressive achievement.

8 CEELI has successfully implemented regional initiatives that include multi-country workshops, and placement of a paid Regional Institution Building Advisor (RIBA) whose work in several countries to strengthen institutional frameworks has been commended by CEELI liaisons and host-country clients. Additionally, from 1996 to 1998, CEELI posted a regional judicial specialist to the CEE, in support of judicial associations and judicial training centers.

III PROGRAM MANAGEMENT

A Introduction

CEELI's organization and management structure features a number of unique elements that distinguish it from other USAID partners and contractors. First and foremost, CEELI's program is implemented in the field by American lawyers working on a pro bono basis, serving as liaisons and legal specialists, and supported by paid in-country local staff. This volunteer-driven program, operational in 22 countries, is anchored in Washington, D.C. by a paid management staff that includes country directors who manage individual country programs, functional leaders who oversee program elements such as judicial reform, program assistants, and other staff who administer the daily operations of CEELI headquarters. Most of this professional staff is comprised of lawyers, and many of them simultaneously perform several functions. On the USAID side, an unusual "omnibus" cooperative agreement controls the USAID-CEELI contractual relationship. With the exception of Russia, which has issued its own cooperative agreement directly with CEELI, other USAID missions contribute funds from their program budgets to support mutually agreed upon CEELI activities in their respective countries. Yet the overall cooperative agreement is supervised by the USAID ENI Bureau in Washington, D.C. Current USAID policy is that funding for CEELI is provided on a non-competitive basis, similar to several other cooperative agreements or grants issued to NGO partners.

Complicating this network of relationships are cumbersome reporting requirements and an annual budget cycle for each country, forcing CEELI and USAID to be in a constant state of documentation, workplan development, proposal writing and proposal reviewing, much of which seems to have little utility with regard to funding levels or the substantive direction of programming.

B Program Management Conclusions

In summary, the team's conclusions with respect to CEELI's program management follow:

1. CEELI has a consistently positive record of leveraging funds from other resources, and for operating frugally. In total, the team estimates that CEELI has leveraged more than \$2 million from 24 different sources to extend the impact of its activities. As one USAID officer stated: "We get more bang for the buck from CEELI."
2. The costs of running a typical CEELI field office are extraordinarily low, using a strict comparative analysis of other contracting mechanisms.
3. Critics have stated openly and quietly that CEELI liaisons, because they are volunteers, do not meet the same standards as a typical "development professional" employed by a more conventional USAID contractor. The team found, after extensive analysis of this question, that CEELI liaisons are highly motivated and competent legal professionals who also bring other business, organizational, and management skills to their work. The success of CEELI volunteers is due in part to the careful recruitment process in the CEELI Washington, D.C., office. Evidence of this record of high-quality performance is seen in the many job offers that former CEELI liaisons receive from conventional USAID rule of law implementors. Limitations of the pro bono approach, such as the

short duration of liaison in-country assignments, lack of in-depth experience with development issues, as well as unfamiliarity with more general USAID strategies and procedures, have been addressed by CEELI with some success. CEELI continues to discuss ways to strengthen its development capabilities while preserving the recognized benefits of the pro bono liaison approach.

4. The elaborate system of reporting and documentation required by USAID is inefficient, burdensome, and detracts from time and resources that could be dedicated to program implementation. Moreover, it does not serve well the interests of USAID, nor does it focus adequately on CEELI achievements and results compared to workplan objectives. Also, due to resource constraints, CEELI has not systematically analyzed and documented its own experience relevant to improving the content and direction of its future programs.

IV RECOMMENDATIONS

The team provides recommendations for USAID and CEELI of two general types: program and management/organizational. We emphasize that the numerous recommendations provided in the country reports, particularly those related to program elements, continue to be endorsed in this final report, and we emphasize our endorsement in general for continued support of existing CEELI programs. In addition, we make the following recommendations:

A Program Recommendations

1. USAID and CEELI should discuss the possibility of CEELI being a more frequent provider of long-term institutional development projects related to legal reform, such as judicial training centers, based on its positive record.

2. USAID should consider expanding CEELI's work in Commercial Law programs, even though the SO divisions between "rule of law" and "economic growth" make this challenging for managers. CEELI's strength in developing indigenous CLE programs with its partners should be utilized to advance better understanding and implementation of recently revised commercial codes in CEE/NIS countries.

3. CEELI and USAID should undertake an analysis, including lessons learned from CEELI's and others' efforts to date, aimed at implementing new and existing strategies and solutions for promoting positive change in the critical sub-sector of academic legal education.

4. CEELI and USAID should explore additional avenues for developing cross-linking issues, based on the positive results of special initiatives such as the Environmental Public Advocacy Centers, women and the law programs, etc. The team makes a specific recommendation that USAID expand CEELI's program to develop EPACs.

5. CEELI and USAID should consider strengthening components of CEELI's regional program, and expanding CEELI's reach to conduct more regional or sub-regional workshops and other activities on issues common to CEE/NIS countries, upon submission by CEELI of an acceptable proposal.

B Management/Organizational Recommendations

Specific Recommendations

- 1 CEELI, with USAID, should examine the utility and efficacy of its current reporting and documentation system, with a view toward strengthening the focus on linkages between program activities and results. Also, CEELI should consider developing its own strategic plans either at the regional or country levels for key elements of its long-term programs
- 2 CEELI and USAID may want to consider moving to a 3-year cooperative agreement, with annual workplans, and some other form of periodic reporting. The present system is expensive and by most reports, not very effective
- 3 CEELI and USAID may want to consider the continuing utility of the present omnibus cooperative agreement, perhaps by replacing it with more country by country agreements, especially for programs or clusters of programs large enough to warrant CEELI placing in country full-time paid professional management
- 4 As USAID gradually closes out of northern tier CEE countries, the importance of having some kind of regional program in rule of law increases. The development of a small CEELI regional program management office in CEE might be an attractive element of an enhanced regional program
- 5 CEELI has established a strong record of using a modest level of USG resources to address the needs of rule of law reform in CEE/NIS, an issue which until now has been a relatively low priority for USAID. As official attention to this issue increases, it is an apt time for CEELI to critically examine its past and its future. This would include such issues as becoming an active competitor for USAID support, continuing predominant reliance on pro bono service as the distinguishing CEELI mark, the development of more useful and effective analysis and reporting policies and procedures, and its external relationships with future funding sources including USAID

General Recommendation

The overall recommendation is that USAID and CEELI began a process of constructive dialogue, using this evaluation report as a basic document. The purpose of the dialogue would be to determine what changes both sides must make to strengthen the ability of both CEELI and USAID to address rule of law issues in the future

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
I BACKGROUND AND CONTEXT	1
A Background	1
B Context	2
II PROGRAM IMPACT	4
A General	4
B Program Findings	4
1 Independence of the Judiciary	5
2 Legal Profession Reform and Continuing Legal Education	12
3 Legal Education Reforming the Academies	17
4 Legislative Assessments Giving Expert Advice on New Legislation	19
5 Criminal and Commercial Law Reform	21
6 Special Initiatives	22
7 Regional Initiatives	25
III CEELI'S PROGRAM MANAGEMENT	26
A Findings Managing a Volunteer Program	26
1 The Structure and Function of the CEELI Washington Office	26
2 Liaisons and Legal Specialists	28
3 Liaison Performance	30
4 Making the Best Use of Local Hire Staff	31
5 Reporting, Analysis and Documentation	31
6 The Question of Costs	33
7 The USAID - CEELI Relationship	34
B Conclusions	36
IV RECOMMENDATIONS	37
A Program Recommendations	37
B Organization and Management Recommendations	38
ANNEX A SCOPE OF WORK	
ANNEX B DRAFT COUNTRY REPORTS	
ANNEX C PERSONS INTERVIEWED	
ANNEX D DOCUMENTS REVIEWED	

I BACKGROUND AND CONTEXT

A Background

This report presents general findings of an evaluation of the USAID-funded American Bar Association/Central and Eastern European Law Initiative (ABA/CEELI) in Central and Eastern Europe and the Newly Independent States (CEE/NIS). The evaluation, commissioned by the USAID ENI/DGSR/RLG Bureau, was carried out in the June-October period of 1998, and covered all aspects of the ABA/CEELI program from 1992 to 1998. The evaluation team was assembled by Management Systems International, Inc. (MSI) under an USAID-MSI Indefinite Quantity Contract for Analytical Services in Democracy and Governance. The MSI team included a senior social scientist with rule of law development experience, a lawyer with environmental and rule of law development experience in CEE/NIS, and two European-trained lawyers with experience in civil law in the context of societies in transition from socialism to free-market democracies. Following a Scope of Work (SOW) (Annex A) and schedule developed jointly by USAID and ABA/CEELI, the team made site visits to eight countries, preparing reports on six of them (Annex B), including Russia, Ukraine, Georgia, BiH, Macedonia, and Poland. Two additional site visits to Latvia and Lithuania focused on the performance of judicial training centers. The team also attended an annual ABA/CEELI meeting of all liaisons, CEELI Washington staff, CEELI Executive Board members, and USAID visitors held in Bucharest, Romania, in July 1998.

The data collection methodology was standard for USAID evaluations. Overall, the team interviewed more than 500 persons in 22 capitals, cities and small towns during the course of two 4 to 5 week trips, separated by 6 weeks. Members of the CEELI Executive and Advisory Boards were interviewed, as well as ABA representatives. In-country interviews and site visit schedules were arranged by local CEELI offices, with input and approval by USAID missions. Respondents included local jurists, foreign donors, CEELI volunteers and staff, as well as representatives of USAID, USIS, and US Embassies (see Annex C, Persons Interviewed). The team reviewed over 150 documents, including CEELI proposals, workplans, monthly and semi-annual country reports, special reports, program training documents, legal assessments, and two prior evaluations (see Annex D, Documents Reviewed). In each country, the team held country exit briefings with USAID and CEELI staff. An interim briefing with USAID/ENI and CEELI leadership was held between field trips.

The purpose of the evaluation, as stated in the SOW, is to determine, at the broad program level, answers to the following major questions:

- 1 To what extent has the program achieved its objectives?
- 2 Are the objectives appropriate?
- 3 What have been the impacts of the program?
- 4 Are the results of the program sustainable?

Of the 22 countries where CEELI is operational, only six of the USAID missions have advanced rule of law as a Strategic Objective (SO), while other missions either lack SOs, such as BiH or, at the

time of the evaluation, Georgia, or have fit the CEELI program under other SOs such as economic growth or more general democracy or civil society objectives

USAID is also interested in the extent to which CEELI has addressed institutional strengthening issues, especially with regard to the development of legal institutions which are consistent with or follow democratic principles of organization, and the sustainability of these efforts

Another question is the relative cost of fielding ABA/CEELI liaisons compared with the cost of fielding more conventional contract technical assistance providers

As determined by USAID, this report is limited to 50 pages, plus annexes. Much of the detailed evidence for this report, as well as the rich diversity of a rule of law development program in 22 distinct countries, over nearly 7 years, involving 387 American long-term liaisons and legal experts, scores of USAID managers, and thousands of local judges, lawyers and other jurists must necessarily be summarized. To retain some of the flavor of this diverse experience, the report contains several illustrations drawn from country reports. The reader is also encouraged to review the country reports, which contain greater detail on the various ABA/CEELI programs. Unfortunately, the team could not visit all the countries where CEELI has operated. Although we have met with CEELI liaisons and management in additional countries, the report inevitably reflects the results of our more intensive site visits and our analysis of the documents provided by ABA/CEELI and USAID.

B Context —

The SOW directs the team to report on findings, conclusions, recommendations and explanations. When the team compared its findings over 8 countries, the larger context and macro-political and economic system factors appeared very important in explaining the direction and degree of impact CEELI programs have had in different countries. Sometimes, an unstable political situation can be overcome by strong, unified leadership committed to taking difficult reform measures, as in the case of Georgia. But overall, the more favorable the macro environment for reform, the greater the opportunity for CEELI to have significant impact, especially at the national level. Where general political and economic factors were negative, CEELI's ability to produce short-term impact at the national level is severely constrained and a different strategy must emerge. We examine some of the main contextual factors below.

The transition to a market economy and democratic society in CEE/NIS requires development of modern legal systems competent in and committed to democratic rule of law. Citizens must also gain confidence that the law works for fairness and justice in the adjudication of disputes, and in the application of sanctions.

Legal systems inherited from the socialist period were ill-suited to the demands of democratic and free market societies. Legal systems were either seen as corrupt, or an arm of state control. The legal hierarchy favored procurators over judges, while advocates were relatively powerless, the judiciary, especially in criminal and administrative law, were not independent, and generally, facilities for the justice system were poor and staff support poorly trained. Bar associations did exist as state licensing bodies, but were not independent and did not serve the members of the association.

Private commercial law practice did not exist. Legal education was mostly very rigid and geared toward memorization and training people for state roles, as judges, advocates, procurators or counsel for state corporations. To oversimplify, the judiciary was not independent, jurists were not highly regarded, and the socialist formula was "Rule BY Law," in which law was a systematic means of state control, rather than "Rule Of Law" as commonly understood in the West.

Although all CEE/NIS countries are emerging from socialist systems, there are differences between them. In countries brought into the Soviet system as a result of WWII, familiarity with European civil law systems was previously well-advanced. Independent bars and sometimes judges associations existed prior to WWII, while traditions of an independent judiciary were nascent, if not fully developed. Countries such as Poland, the Baltic states, Hungary, the former Czechoslovakia, Bulgaria and Romania did not completely lose their institutional memories, and in some countries, such as Poland and Bulgaria, law schools managed to maintain a level of excellence not found as one moves further east.

In countries that for the most part were brought into the Soviet system early on, such as Ukraine or Belarus, the experience with Western legal traditions was much more limited, and the period of Soviet law lasted much longer. In other words, the length of exposure to Western law and legal institutions compared to that of Soviet law is a factor in explaining the extent to which the post-socialist systems have quickly and smoothly adopted modern laws and legal institutions.

Where the transition has been exceptionally difficult, and the drive for reform has become stalemated by more conservative forces, as in Russia and Ukraine, the possibilities for national reform become more limited, and the development of a coherent long-term development strategy becomes more problematic. In these countries, building coalitions of reformers focuses more on the local and regional level.

Another factor driving the transition toward legal modernization is the pace and success of the more general transition toward free market economics. Foreign investment, as in Poland, Latvia, Hungary, and the Czech Republic has been a stimulus to law reform, although in none of these states would experts assert that the pace of development of the legal systems has kept up with the demands of a market-driven economy. Countries receiving substantial foreign investment from the US, such as Poland and Russia, are especially interested in US commercial law.

A major contemporary factor also shaping legal modernization is the aspiration of nearly all former socialist states to become part of the European Union (EU). While interest in American legal principles and solutions remains high, especially in international commercial transactions, it is not surprising that most judicial reformers look to the EU as a model, knowing that if they are accepted into the EU, as with Poland, they will have a limited amount of time to harmonize their laws with those of the EU.

Other factors have also contributed to shaping CEELI programs, most notably the USAID emphasis on strategic objectives and results measurement has forced CEELI and USAID to examine the issue of determining the best fit between CEELI's general program objectives and those of USAID. The degree of fit, or lack thereof, has been a factor in shaping the USAID-CEELI relationship, the degree

of support received by CEELI, and the extent to which the opportunities for synergy and constructive partnership have been successfully exploited

II PROGRAM IMPACT

A General

The ABA/CEELI program was initiated by the ABA soon after the collapse of the Soviet system as a response to the expected demand in the region for knowledge about Western legal principles, approaches, and modalities, for rapid legal technical assistance in meeting the challenges of developing new constitutions, new commercial and criminal codes and procedures, for learning about the “institutional infrastructure” of a rule of law system in the West, i.e., an independent judiciary, self-governing and self-policing lawyers’ associations which advanced the interests of the legal system, as well as serving the professional needs of its members, and the introduction of more effective means of meeting the educational and training needs of legal professionals and students.

The underlying principle of the initiative was that CEELI, using the well-established American legal tradition of pro bono service, would mobilize the vast and highly sophisticated membership of ABA and the American legal profession in general to go to emerging democracies, answer questions, organize seminars and workshops, and generally assist in the transformation of socialist legal systems to ones more in tune with democratic and free-market societies.

CEELI’s main goal is to assist in the transition to societies governed by the rule of law, not by arbitrary and unappealable dictates of the state or the Communist party. CEELI’s clients are the jurists, lawyers, teachers and legal officials who are in the forefront of this rising demand for information and assistance and who must ultimately take responsibility for building a rule of law regime in their countries.

B Program Findings

The team finds that ABA/CEELI programs have achieved, or have made substantial progress toward achieving, stated and agreed upon objectives, especially in the more recent period. Second, the team found that most observers, whether USAID, CEELI, or host country leaders, believe that CEELI programs have generally addressed appropriate issues. The team concurs with this conclusion, based on its analysis of contextual conditions and host-country demand in each country visited. Third, the impact of CEELI programs, while difficult to measure in some instances, has been qualitatively substantial, as assessed by reported changes in knowledge and skills, changing power and institutional relationships toward greater independence and efficiency, and greater self-confidence and diversity of legal practitioners. Fourth, while it is too early to determine whether some of the specific innovations supported by CEELI will survive, the team finds that the issue of sustainability is very much on the agenda, whether the change is a new procedure, power relationship, or institution such as a judicial training center or a new independent lawyers association.

The report now turns to a review of CEELI’s work in the major program areas of the rule of law program.

1 Independence of the Judiciary

Judiciaries in formerly Soviet states cry out for reform. Although conditions vary among countries, major constraints to a strong and independent judiciary generally include low salaries and low stature, leading to a relatively young and inexperienced population of judges, who often use the judgeship as an apprenticeship for pursuing a better legal career, poor working conditions, including heavy case loads, insufficient staff support, and inadequate equipment, weak, state-controlled, or non-existent associations, and overall, insufficient funding from the government. In sum, these constraints in some countries have paralyzed judiciaries that, in Communist times, had a minor role in the process of adjudication and now are required to oversee complex litigation. As a result, justice is prolonged and corruption persists.

Given this state of affairs, CEELI has placed a high priority on strengthening judiciaries. As one senior CEELI staff member noted, “Legal reform is ineffective without judicial reform.” And while the finer elements of “judicial independence” are debated, some minimal principles are obvious: judges should be qualified, judges should have access to continuing education and training funded by the state but controlled by the judiciary, judges should receive reasonable salaries, and judges should be free to adjudicate and associate without interference. Driven by its commitment to strengthen judiciaries, CEELI has dedicated considerable analysis to the question of judicial independence, and is currently developing and plans to test its own Judicial Independence Survey, based in part on the United Nations’ principles on the Independence of the Judiciary.

CEELI’s work in judicial reform has included two key components: one, assistance in the establishment and development of independent judges’ associations, and two, provision of judicial training, through workshops and seminars, as well as through establishment and development of judicial training centers (JTCs). The discussion below summarizes findings and conclusions related to CEELI’s work in these areas, in addition to other efforts in judicial reform.

a Development of Judges’ Associations

An important feature of nearly every CEELI program is support for the development of judges’ associations. Judicial associations are an important component of judicial independence because they serve to democratically represent the interests of the judiciary in an organized and effective way. In some countries, such as Belarus and Croatia, the political climate has not been supportive for advancement of judicial associations. In most other countries, CEELI has been the main supporter of efforts by judicial reformers to establish independent associations of judges through a variety of means, including workshops, study tours, assistance in drafting charters, bylaws, and program plans, helping to build coalitions of activists through additional training, and assistance in helping the associations conduct their own training programs through co-sponsorship of workshops, training of trainers, and more recently, small grants for initial operating expenses.

Two additional and important features of CEELI’s work with judicial associations have been to assist the associations in developing codes of judicial conduct, and to establish more rigorous and objective criteria and processes for the appointment of judges to the bench.

The team found that CEELI's work in support of independent judges' associations has produced significant impact in 17 of the 22 CEE/NIS countries. Of the five where CEELI does not work with judges' associations, two are characterized by repressive political climates, two are still dominated by old-style socialist organizations, and in one country there was little need for CEELI support.

With respect to the 17 countries where CEELI is actively engaged in developing independent judges' associations, the team determined that CEELI directly assisted in the formation of associations in 10 countries, and it provided important assistance accelerating the professional growth of the associations in the remaining seven. In Poland, for example, Iustitia, a relatively small association of judges, was established prior to CEELI's arrival. With CEELI support, it has grown from a "club" of reformers to a national association now representing over 1000 of the 6000 judges in Poland. In Macedonia, the Macedonia Judges' Association has worked closely with CEELI to develop a code of ethics, a publications program, a Macedonian-run continuing legal education program, and a very strong proposal to establish a Judicial Training Center, all with CEELI assistance. In Ukraine, where the climate for systematic judicial reform has been difficult, CEELI has brought the bench to the edge of establishing an independent association.

The formation of associations at the national level has also benefitted from CEELI's organization of regional conferences and, in some cases, sub-regional associations and workshops in which judges can participate and learn from the experience of others.

The results of CEELI's efforts to establish and develop judges' associations are notable. In all countries visited where CEELI has worked with judges' associations, the team was able to identify clear benefits to the judiciary at large provided by the strengthened associations. Some of the more important benefits include 1) increased political lobbying or advocacy for judicial rights and independence (something commonly prohibited by individual judges), 2) more educated judges due to training activities sponsored or organized by associations, as well as information and publications disseminated by associations, 3) enhanced sense of professionalism and esteem in a profession traditionally suffering from low stature, and 4) merely by virtue of being more organized, a stronger professional collegium more capable of providing a broad range of services to its members and more democratically representing the views of its members. The team also found that, due directly to CEELI's efforts, judges' associations are quickly gaining tools and skills that will allow them to be sustainable in the long term. Current levels of sustainability vary from country to country. The Macedonian Judges' Association is perhaps one of the most sustainable associations studied, while the more nascent associations in the BiH are perhaps most in need of continued support.

b Judicial Training and Judicial Training Centers

Judicial education is a fundamental prerequisite to judicial independence, as judges must be well-educated to be able to function effectively and independently. While judicial training is usually the legal (either constitutional or statutory) responsibility of the Ministry of Justice (MOJ), in most countries this function has been moribund or very badly executed.

CEELI has addressed training needs for the judiciary in all 22 countries. In the early years, CEELI's efforts focused on the organization of workshops and seminars featuring large numbers of Western legal experts, including a high percentage of sitting US judges, and over time, increasingly utilized local expertise. The team found consistent evidence that participants in judicial reform workshops have profited from training and exposure to new concepts. Workshops held outside capital cities have often been the first exposure judges and other legal professionals have had to Western legal principles and practices. For example, a district judge in a poor region of Ukraine attended a CEELI-sponsored workshop in 1996 held in a major city four hours from his district. He lobbied CEELI to conduct a judicial training program in his court so his colleagues might benefit. Subsequently, this judge developed on his own initiative a plan for improving court reporting and for development of a computerized legal information system for his district, an effort inspired by his participation in CEELI workshops.

In more recent years, CEELI's efforts to train the judiciary have focused on more systematic activities aimed at developing cadres of trainers through "training the trainers" programs. Institutionally, as independent judges' associations have developed, CEELI has co-sponsored continuing legal education for judges within these associations. In some countries, such as BiH and Georgia, CEELI still shoulders a substantial part of the organizational work, but in countries where the associations have matured, such as Macedonia, CEELI is gradually assuming a more supporting role. In a few countries without effective independent judges' associations, CEELI has used its own resources and organizational skills to mount training programs for judges, especially at the local and provincial level. In Ukraine, for example, the Kharkiv-based legal NGO, Justo Titulo, with modest financial support from CEELI, has mounted a national program of training for the legal profession, which has addressed some of the needs of judges as well.

In order to build an element of sustainability into judicial education, CEELI has assisted in the establishment of judicial training centers (JTCs) in at least 10 CEE and NIS countries. The need for institutionalized judicial education cannot be understated. JTCs in Western countries serve an important function in the preservation of judicial independence. In formerly Socialist countries, this need is especially urgent due to the swift pace of legal reform. As laws in the region change, judges must be trained on how to implement those laws. Since independence, most judicial training has tracked the periodic, ad hoc training provided and developed by the MOJs during the communist period. The training mechanisms were non-interactive, and the judges played little if any role in determining what the content would be.

To address this problem, CEELI has helped develop JTCs in a number of countries. The ultimate goal has been to help the judges themselves build sustainable institutions capable of providing judicial training using modern teaching techniques and providing relevant information. The method for developing JTCs has varied depending on the political will within each country. In some instances, the governments have been supportive of developing such modern training institutes right from the beginning and have dedicated appropriate resources to them (e.g., Moldova). In other countries, the governments have said that they are supportive, but they have not been willing or were slow to provide appropriate support (e.g., Romania and Albania). In yet other countries, the governments initially failed to recognize the need for judicial training mechanisms. In those countries, CEELI supported non-governmental associations of judges have conducted training

programs, which the government has eventually come to recognize and support, leading to the creation of JTCs with judicial involvement or control. This was the experience in Latvia, and is being replicated in Macedonia and Poland, as well as to a certain degree in BiH. It is anticipated that the governments in these countries will provide some financial or in-kind support to those JTCs.

The key to long term sustainability (both financial and programmatic) is local government support. The appointment and preparation for duty of judges is a government function, and it is the government's duty, as in the United States, Canada, and Western Europe, to train its judiciary. Although this may seem antithetical to the concept of judicial independence, it need not be as long as the judges play an important role in determining what their training will consist of, and as long as the government does not seek to use its financial stake to control that training and to control the judiciary. Thus far, this does not appear to be a problem in Moldova, Latvia, Macedonia, and Poland. But it is unlikely that even a very active judicial association can fulfill (particularly in the financial sense) the essentially government role of conducting full-scale, long-term, country-wide, and consistent judicial training. Nonetheless, CEELI's experience with training programs run by judicial associations has shown that they are useful for disseminating information to judges on an ad hoc basis and can become the basis for a full-fledged training center. They are also an important basis for building awareness within the judiciary for the need for training, for educating judges concerning modern training methodologies, and thus ultimately, for building the judiciary's capacity to take the lead role in training its members.

It is difficult to provide a more full or comparative review of the different approaches to developing JTCs because the team did not visit Albania, Romania, or Moldova, and did not emphasize judicial training in Russia or Ukraine because it is not an area in which CEELI is working. In Georgia, work on developing a governmental judicial training center is just beginning, and it is not clear that CEELI will be working on that effort.

The challenges CEELI has faced in the development of JTCs in this region are predictable and take time to fully overcome. Constraints are plentiful, and include only in part the difficulty of finding qualified directors, facilitating agreements with governments and negotiating delicate partnerships with MOJs, developing cadres of indigenous trainers who don't rely on old teaching methods, and designing workable incentives for judges to be trained. The team believes that any organization charged with developing sustainable JTCs given such constraints would need a long-term commitment from USAID of both time and resources.

Despite these constraints, CEELI has helped establish and develop JTCs that are well on their way to sustainability, to the extent that CEELI is able to influence this variable. The team concludes that, while CEELI is not a traditional "institutional development" USAID contractor, it has successfully integrated complex concepts related to institutional stability into its work with JTCs. It has carefully structured comprehensive bylaws, representative boards, plans for training of trainers, curriculum development plans, and fund-raising strategies. The team notes that CEELI's unique legal expertise brings to the process an element of scrutiny that perhaps would be missing from a more conventional USAID provider. That CEELI sits on the founding board of several of the JTCs it has helped establish, and provides an expert voice on the board, is testimony to this finding.

In addition to government support (either financial or in-kind), key elements of sustainability include a strategy for securing funds from diverse sources, an institutional structure that provides for judicial control over fundamental policy decisions related to operation of the JTC, and incentive structures that promote widespread education of legal professionals. JTCs that have been significantly supported by CEELI feature these key ingredients.

Finally, we address a question posed by USAID as to whether a country-specific or regional approach is preferable to the development of JTCs. While we did not have the opportunity to visit a regional JTC, and are unaware of any regional JTCs that service the CEE or NIS region, we endorse a strategy that would support the simultaneous development of both country-specific and regional JTCs. At the country level, JTCs are critical because laws and conditions vary among countries, and individual governments must take responsibility for educating judiciaries. Yet at the regional level, training activities could provide the added benefit of introducing concepts and knowledge that are common to judges and lawyers from across the region, could strengthen the links between countries, and could optimize the opportunity to share lessons learned among countries. A further compelling reason for a regional initiative is the unfortunate reality that most countries in the region lack operational JTCs, and a regional center could expedite the process of educating judges in two ways: one, by providing some training to judges who cannot get any training at home, and two, by stimulating the establishment of country-specific judicial training centers through incentive structures or other creative mechanisms that would generate support for host-country efforts.

c Other Judicial Reform Efforts

In addition to the development of associations, training programs, and judicial training centers, CEELI has worked in many other ways to achieve greater judicial autonomy and effectiveness. Four such efforts are worth noting here. They are: 1) development of judicial codes of ethics, 2) reform in the selection and appointment of judges, 3) advocacy training, and 4) the development of better information systems.

CEELI has sponsored workshops and provided a variety of inputs into the effort to help judges raise their status and to control the dangers of corruption through the creation of judicial codes of ethics, usually drafted by the Judges' Association. CEELI has helped judges prepare formalized codes of ethics in 13 of the 22 CEE/NIS countries.

Reform in the selection and appointment of judges has been a CEELI initiative in several countries, notably Georgia and Armenia. Both countries have adopted an examination-based entry requirement for appointments to the bench. The Georgian example is particularly noteworthy. There, the government's judicial reform coalition, with CEELI support, decided that the only way to break the cycle of widespread judicial corruption, incompetence, and low status was to have all judges pass an examination based on the major new civil, commercial and criminal codes already passed by the legislature. Failure to pass would ultimately result in dismissal. There was widespread skepticism that any examination system could be honestly administered, let alone one affecting the future of sitting judges. Georgian reform leaders worked with CEELI to implement an honest and effective exam. The CEELI liaison leading the effort, who had a strong media background before becoming

a lawyer in New York, brought in the officials from the State of California, other USAID contractors such as ProMedia, local Georgian media, and the international and diplomatic community to ensure that the exam would not only be honestly administered, but would be widely perceived by Georgians as being of the highest integrity. A California expert came to Tbilisi to work with the Georgians on the structure of the exams, which were then printed in California. The exams were put on a Lufthansa plane in San Francisco under the watchful eye of the German Consul-General, received on the airstrip in Tbilisi by the German Ambassador, who put them in his limousine and held them in his Embassy until exam day -- all under the glare of Georgian and international media coverage. On exam day (held in the national parliament), the balconies were filled with CEELI-mobilized international observers, each assigned to monitor specific examinees for potential cheating. Similar safeguards were in place for the exams held in two other Georgian cities. Forty-seven people passed the exam out of several hundred who took the exam. No sitting judges passed. At the end of the day, even the critics and those who failed said the process was honest and uncompromised. As the Georgian Chair of the Legislative Drafting Committee said, "without CEELI, we could not have done it." This is a CEELI and USAID success story. Unfortunately, the liaison who directed this effort left Georgia in September despite entreaties by Georgians and an offer by CEELI to stay on for another year. Part of her stated reason for leaving was the frustration and time involved in dealing with ill-informed micro-management by USAID.

While the main rationale for judicial associations is to serve the immediate and practical interests of members through such programs as publications and training, a less familiar feature is the role of advocacy. CEELI runs advocacy workshops and training for all of its partner judicial associations. Advocacy is sometimes no more than the projection of a well-informed and reasoned voice, sometimes it involves political actions which many judges may find distasteful. CEELI's advocacy training has been tailored to the agenda of the associations, whether it be advocacy for better salaries, working conditions, more independence, or more systematic training. Even in BiH, judges are beginning to find a voice. In Macedonia, if the parliament passes new legislation moving the judiciary out of the financial control of the Ministry of Justice, advocacy training will have produced rather substantial results.

Observers have been slow to recognize that judicial independence rests in large part on the ability of the courts to render decisions fairly and quickly. Both outcomes depend as much on good support systems as they do on well-trained and honest judges. CEE/NIS courts are notoriously weak in the provision of good legal information systems, including everything from the accurate recording of trials to the ability of judges to access current laws and judicial decisions. Good adjudication depends, first and foremost, on the knowledge and accessibility of the legal standards to be applied. Such access is a problem in every system the team encountered, from advanced Poland to the poorest oblast in Russia or Ukraine. CEELI has from the beginning worked on development of judicial libraries, newsletters, print publications of court decisions, and the preparation of bench books. Due to funding limitations, CEELI has been unable in many countries to develop programs which could make this leap. In 1998, with computer training centers and an on-line commercial law web site (established with CEELI and private sector support in Poland), and with a new four-court pilot computer/Internet project put on line by CEELI and Chicago-Kent University in Macedonia, CEELI and its partners are now moving into an age of vastly more efficient, accessible and affordable information systems. By combining its academic reform effort with its partnership with

the Macedonian courts, CEELI has been able to create a potentially powerful legal information service in the University, while serving the data access needs of the judiciary as well

Conclusions Independence of the Judiciary

CEELI's efforts to promote judicial independence through the development of strong, independent and service-oriented judicial associations, through continued training and the development of judicial training centers, and through the development of more efficient information systems for justice systems, are appropriate

Through the establishment and/or strengthening of 17 judicial associations in 22 countries, program impact is being achieved. Gradually, the general objective of better trained judges is being achieved through CLE-type programs and by the establishment of JTCs. The competence and character of judges is being addressed through the preparation of sanctioned codes of ethics for judges.

These achievements contribute to progress toward independent judiciaries. Achieving this broader goal requires more time, targeted expertise and resources than has been provided to CEELI. Nevertheless, CEELI increasingly has made good use of the resources it does command, especially since 1996 when it began to shift more attention to the building of institutional capacity.

CEELI has demonstrated the ability to collaborate with host-country partners to develop institutions featuring elements of sustainability, with results that meet USAID standards of institutional development. Especially in the context of judicial training centers, CEELI has successfully implemented such projects, despite the complexities and constraints it has faced, including those intrinsic to development in CEE/NIS countries, and those presented by the USAID environment. The appointment of a regional judicial specialist in 1996, and a regional institutional development advisor in 1997, underscores CEELI's determination to strengthen its own ability to provide support, guidance and counsel to emerging reform coalitions.

The process of developing judicial independence, dependent as it is on a variety of factors and influences, only some of which are under CEELI's control, is by no means over. After 6 years of CEELI effort in 22 countries, while progress is being made, it is unlikely that any CEE/NIS country would measure up to even a moderate Western standard of judicial independence. No judiciary has received its own budget. All suffer from terrible working conditions. Few have access to adequate support in the way of legal information systems nor do they enjoy adequate administrative support. Most are still lagging behind other legal sectors in remuneration, respect and public confidence.

Still, in part because of CEELI, in part because individuals in all of the transitional countries have responded to the challenge of change and the need for reform, progress is being made. The introduction of an honest examination for judges in Georgia is as much a "constitutional" event as is the adoption of a new written constitution. The establishment of a fledgling judges' association in a devastated country like BiH is a positive development. Establishment of judicial training centers and JTC proposals is a measurable impact. These are but a few of the positive markers of rule of law development results the team observed. CEELI's myriad workshops, training programs, study tours, and technical advisory activities have certainly created a better understanding of the value of

an independent judiciary. Its effort to create or redirect judicial associations with a reform agenda has been successful. Its various efforts to improve access to accurate and timely information have made a difference. More time and resources spent in this area would go a long way towards the goal of judicial independence.

2 Legal Profession Reform and Continuing Legal Education

a Developing Independent Bar Associations

It is not surprising that the development of independent associations of legal professionals has been a high priority for CEELI in its work in CEE/NIS. The general approach to this effort has followed the same path as the development of judicial associations, with some exceptions noted below. CEELI's early phase (1992-96) focused on first informing CEE/NIS lawyers of the value of an independent (hopefully national) bar which would both serve and monitor its membership, followed up by a variety of organizational efforts, ranging from study tours, technical assistance in framing charters, advice on organizational structuring, developing workplans, and in some few cases, providing small grants for start-up costs. CEELI programs also stressed the role of private law, and did much to expose CEE/NIS lawyers to the reasons and practicalities of establishing private law practice. Although CEELI demonstrated considerable flexibility in how it approached reform of the legal profession, it was to be expected, given their ABA background, that CEELI liaisons would extol the benefits of independent national or umbrella-type bars, designed to unify all members of the legal profession.

The successful establishment of independent national bar associations has been associated with CEELI efforts in Armenia, Kyrgyzstan, and Moldova. In Ukraine, CEELI actively promoted the development of some form of national association until 1997, but changed its approach in the face of Ukrainian resistance. This resistance is based on the difference between the types of lawyers involved, and has been flexibly taken into account by local CEELI staff. In Kyrgyzstan, CEELI helped to establish the first and only national voluntary bar association in the country. In the Czech Republic, Estonia, and Latvia, CEELI has helped to strengthen existing national associations. In countries with old-style state-run bars, as in BiH, CEELI has maintained relationships, encouraged participation in regional and international events, and generally bided its time until a coalition of younger, usually commercial law practitioners, begins to take over.

In recent years, the record suggests that a more pragmatic approach to professional reform has emerged. CEELI's new strategy, as typified by the Ukraine approach, has been to work with already existing organizations which have demonstrated interest in reform, at the national and at the local level. In Romania, the big breakthrough was the formation of the Bucharest Young Lawyers Association. The Macedonian Bar Association was a conservatively-run organization, the main function of which was to license lawyers. It rarely met, could not develop a quorum to hold an election, and provided no services to its obligatory membership. CEELI worked with a small group of reform-minded lawyers who eventually devised a change in the organization's leadership election rules, and who recently emerged as the dominant force on the association's board. This reform group plans to develop an active program of training, advocacy and service with strong support from CEELI. Patience and long-term relationships are now paying off for both sides.

In other situations, CEELI has actively supported the development of new, specialized associations, such as the Association of Media Lawyers in Kiev, the Macedonian Business Lawyers Association, and the Zagreb Business Law Group. In all 22 countries, CEELI is associated directly with the development and strengthening of four sub-national bar/law associations, 14 functional associations, including six representing women in the profession, and four law student associations.

Many of these associations, with CEELI support, have gone on to establish legal resource centers. These include the Georgian Young Lawyers Association, the Moldova Law Center, and the coalition of three Polish associations, the Advocates, Lawyers, and Legal Advisors, who came together to establish the Board of the Commercial Law Center in Warsaw.

The extent to which these associations are governed by democratic practices, have held elections, have expanded their membership, and have in place active programs for financial sustainability varies considerably, although these issues have been a high priority for CEELI in its various workshops, training programs, and technical support activities mounted by liaisons and by the regional institutional development advisor. While some organizations, such as the very active Justo Titulo in Ukraine, are essentially dependent on a single strongly motivated entrepreneur, others, such as the Georgian Young Lawyers Association, are as fully developed as any Western bar association, the constraints of the Georgian situation notwithstanding.

Achieving long-term financial sustainability, as with all non-governmental and professional associations in CEE/NIS, is a difficult problem. The team found that CEELI is working actively to find ways to achieve financial sustainability. The CEELI-supported Polish Commercial Law Center, for example, charges for its Continuing Legal Education programs, as do several of the local Russian law associations co-sponsoring commercial law seminars. Others such as the Lithuanian Commercial Law Center have developed an English-Lithuanian Legal Dictionary for sale to the profession. CEELI has helped associations prepare grant proposals for submittal to other foundations noted for support of rule of law activities, such as the Open Society Foundation, or, in Ukraine, the Eurasia Foundation.

b Special Interest Associations

As mentioned above, CEELI liaisons have found it useful to encourage the development of more formal associations as a means for giving expression to and supporting the development of the interests of more specialized groups in the legal profession. In four countries, law student associations have been an important effort, perhaps best exemplified by the very active program in Ukraine, where CEELI has been successful in developing a rapidly growing national association with active chapters in 10 Ukrainian law schools. In conjunction with student association development, CEELI supports student participation in local, regional and international moot court competitions.

A second major effort is CEELI's work with the development of associations of women in the law, found in six countries. These associations vary considerably in membership and objectives, but are generally united by two broad concerns: the advancement and protection of women's rights, especially with regard to domestic violence, and the advancement of the role of women legal professionals. In Russia, USAID and CEELI have made a commitment to the long-term

development of a women in law program, which is evolving from its initial consciousness-raising stage to one targeted on gaining greater access to court protection of women who have suffered from domestic violence

The relationship between the rule of law and the role of the media has been an important issue for CEELI and its partners. In Ukraine, for example, where independent media organizations have been threatened with punitive law suits filed by offended politicians, members of the CEELI supported Association of Media Lawyers have successfully defended their clients in Ukrainian courts

In Macedonia, CEELI has helped strengthen the Macedonian Business Lawyers' Association, established prior to CEELI's arrival in order to unite and educate the increasingly expanding population of commercial lawyers

c Continuing Legal Education

Continuing legal education is a key ingredient of the CEELI approach to rule of law development. For purposes of analysis, CEELI's training efforts can be divided into two main streams: first, CEELI-organized training, second, CEELI-supported CLE programs instituted by local organizations. In the first category, CEELI has mounted an extraordinary array of training programs for members of the legal profession in CEE/NIS, ranging from major conventions on constitutional law to sustained efforts to improve advocacy skills. Altogether, using pro bono U.S., European and increasingly, CEE/NIS expertise, CEELI has mounted 256 major workshop and training efforts in the 22 countries (in addition to scores of smaller seminars or lectures), affecting more than 7,500 members of the legal profession, from judges to academics. Starting from only 20 workshops in 1992-93, CEELI was able to mount 84 programs in 1995-96, the high point of CEELI's direct training effort. Major themes of CEELI training included commercial law, issues in the development of legal and judicial associations, and criminal law. In certain countries special interests and programs helped shape the CEELI training agenda. In Ukraine, for example, environmental law became a major theme in 1995/96, preceded by a number of workshops on various aspects of the development of independent bar associations.

In addition to workshops, CEELI also organized a number of study tours to the United States and Europe.

The team found that respondents in all eight countries were in agreement that CEELI training programs have been of high quality, relevant content, and well presented. Respondents reported that while initially there was great interest in learning about American law and legal practices, they did not feel that CEELI programs were in any way ideological in nature. On the contrary, respondents said that CEELI frequently drew on European experts to balance the presentations of Americans. However, respondents also noted that this interest in the substance of American law had been satisfied, and there is now less need for this kind of general training.¹ On the other hand, Russian

¹ This view was expressed by a Russian reform leader in Saratov, but was repeated by many others especially in NIS region. In Poland, where US investment and influence is very strong, judicial leaders, government officials, private commercial lawyers and some academics all agreed that it was important to understand American

and other respondents reported a continuing interest in the methodology of American style continuing legal education. The method of interactive teaching, role playing, and case-based presentations combined experiential learning with an inductive approach that differed sharply from the former socialist, and more general European approach to legal education. Respondents, when pressed to give examples of the impact of their participation in CEELI training programs often pointed to attitudinal changes as much as to specific skills gained. Russian advocates said they had more self-confidence and could "hold their head up" in a courtroom, in part because they were also now more skilled in formulating and presenting briefs on behalf of their clients.

The team probed local professionals who participated in workshops for critical feedback, but received only a limited response. Some noted that the period of learning about the West was over, but still insisted that CEELI training has been very useful in substance and in style. A Russian law teacher, herself the director of a center for continuing legal education, noted well what many others said: that it was valuable to learn about American law and legal structures, but the more important message was about changing the way we think about law and the role of legal professionals. Also, the American "approach" to practical, experience-based legal education was deemed very attractive, and has been adopted to some extent, mainly in professional continuing legal education initiatives.

One American former CEELI volunteer trainer advanced a sharp critique of CEELI workshops in which he participated during the 93-94 period in Russia. The main criticisms from this source were that the programs were not conceptually well structured, the instructors were not knowledgeable about Russian conditions, could not speak the language, and, therefore, were unable to tell Russians "what they needed to know." The team examined these issues by reviewing documents on course content and through extensive interviews with respondents who had participated in training programs. The team found that, first, although CEELI liaisons and Western trainers typically did not speak Russian (a few exceptions are noted), instruction and materials have always been provided in the local language, so no potential participants have been excluded from training activities due to language barriers. Second, there is limited evidence that, with major exceptions such as the Russian jury trial training program, CEELI's course content in the early years was less systematic than in later years. Beginning roughly in 1995/96, more structure and thematic linkages began to appear in CEELI's curricula. In many countries, such as Poland, commercial and private law training constituted a major and consistent theme throughout the 6-year program under review.

In the Western world, the access to information is so great that any one source, such as a printed text, is somewhat devalued by the availability of so many other sources, most recently the Internet. In CEE/NIS, the conditions have been just the opposite, particularly in the first years after the fall of the socialist system. All legal professionals were hungry for information, particularly in the form of written materials. CEELI workshops were highly valued by all respondents for the handbooks participants received. As one Ukrainian jurist reported, even if he did not understand everything that was being said in the workshop, he could study the materials upon returning to his home or office. CEELI's specially prepared handbooks, such as one giving guidance on establishing and operating

law as a constantly evolving body of legal principles and "solutions" devised to regulate and facilitate rapidly changing economic and social situations. The Poles realized that it was the legal principles that mattered. Once understood, most could be made to fit with the Polish civil law format and tradition.

a private law practice, are highly valued, and are even today still in use. In Poland, workshop materials from CEELI's commercial law programs are being published and distributed nationally by a Polish publisher.

The CEELI program to introduce continuing legal education as part of the ongoing effort of local legal associations has been somewhat slower to develop. The reasons for this have included a shortage of CLE trainers, lack of tradition, and scarce funding. Among the eight countries visited by the team, the process of systematic development of local CLE programs was most advanced in Russia, where early experience with the jury trial project as well as commercial law training provided solid foundations for the development of Russian-language curriculum materials, an extensive training of trainers program, and the willingness of several regional-level bar associations or collegia to implement, with initial CEELI support, completely "Russified" CLE programs. Less systematic but still effective training of trainers programs have been held in many other countries, often in association with whichever group of jurists was best organized. In Macedonia and Latvia, for example, the associations of judges were more advanced, and therefore adopted CLE-type programs rather early. In Georgia, the Georgian Young Lawyers Association quickly introduced CLE-type programs with some assistance from CEELI. In Ukraine, a legal NGO implemented a CEELI supported CLE program, holding 40 workshops throughout the country, using CEELI materials and, from time to time, CEELI liaisons as guest speakers.

Conclusions. Developing Independent Lawyers' Associations

The development of independent legal associations is a critical element in achieving the goal of a society governed by the rule of law. Such associations not only advance the interests of their members, but also serve as potential watchdogs against arbitrary uses of state and judicial authority. CEELI's efforts to develop independent lawyers' associations have met with some resistance in those countries in which the national bar is still an extension of the state's licensing power. In other countries, divisions between different elements of the profession, e.g., advocates, procurators, commercial lawyers, notaries, and legal advisors, have made the development of comprehensive bar associations difficult to achieve. CEELI has successfully adapted to these realities by increasingly focusing its efforts on "functional" national or regional organizations, focusing on advocates, commercial lawyers, women, law students, or a collegium of lawyers in a particular city, such as Rostov or Saratov, Russia. This approach is achieving positive results even while the long term impact of these associational developments is more difficult to ascertain.

Conclusions Continuing Legal Education

The CEELI continuing legal education program, through which CEELI itself organized and provided most of the training, achieved its objective of increasing awareness of Western legal principles, procedures, and practices. These programs have been very well received, and respondents cited a number of examples where their skills and self-perceptions have changed because of their participation. This, combined with the very high value placed by respondents on CEELI's written materials, suggests that the program has had lasting impact. Although proponents and critics might question the extent to which American law and legal principles taught by US experts is useful to

Ukrainians or Albanians, the team concludes that most CEE/NIS legal professionals were, and often still are, eager to learn about Western approaches, and continue to appreciate the CLE methodology

While somewhat slower to develop, the establishment of CLE programs by local legal associations is moving forward. Mounting such a program by a professional association requires a level of organizational skill and commitment, as well as a modicum of financing that is beyond the reach of many still nascent bar or specialized associations. CEELI continues to assist these organizations in a variety of ways, but recognizes the need to build local organizational capacity which must, in the long run, take responsibility for meeting the needs of the legal profession

3 Legal Education Reforming the Academies

a A Difficult but Important Task

Perhaps the most difficult institutional arena for CEELI's reform effort has been law schools. The objective of legal education reform has been especially challenging, not only due to contextual circumstances within the CEE and NIS countries, but because this area of reform has not traditionally been advanced by USAID. More recently, USAID's commitment to this objective has grown. CEELI Executive Board member Talbot "Sandy" D'Alemberte acknowledged CEELI's interest in strengthening results in this realm. As President of Florida State University, Mr. D'Alemberte understands well the difficulties of academic reform even in progressive American universities. In countries in the CEE/NIS, even the best law schools have enshrined an older generation of faculty members in positions of authority and control. These administrators and senior faculty members resist change, and view with some suspicion the American way of teaching law and the American insistence on interaction and "Socratic dialogue" as a way of engaging the student in the process of legal reasoning.

Whatever the difficulties, the importance of legal education reform cannot be overemphasized. Judges and lawyers graduating from the academies today will be the leaders of tomorrow. Whether other elements of a rule of law system introduced by CEELI and the West in general will be sustained depends in part on the openness to reform on the part of the next generation of academic leaders.

b Developing a Sensible Strategy for Change

In the six countries visited by the team, the principal finding is that CEELI has been able to introduce limited change in legal education in some schools, largely by cultivating, training, and supporting the efforts of reform-minded faculty members and students who are prepared to take risks and try a different approach to learning. CEELI support includes extended (3-4 month) study tours in the US for members of law faculties, the development of a Sister Law School program (funded by USIA, not USAID), support for libraries and information systems, and a wide variety of in-country workshops on such matters as clinical legal education, the development of new curriculum materials, and the development of law student associations. Although many US schools were active in the education reform efforts, especially in the beginning, certain schools seem to have developed a long-term interest in relating to the region, providing faculty, curriculum development support, training

in administration, and library materials. Prominent among them are Villanova, the Catholic University of America, Florida State University, Georgetown University, Washington University, and, recently, the Chicago-Kent School of Law, to name a few. The team found that many of these activities have had impact at the individual faculty level. CEELI success stories include the development of experimental curricular materials, as in Russia, the introduction of interactive clinics, as in Donetsk and Sarajevo, and the development of a legal informatics center at the Skopje Law Faculty in Macedonia. These success stories were predicated upon CEELI's cooperation with reform-minded law school administrators and faculty.

Overall, however, there is widespread resistance to across-the-board institutional change in the academies. This factor, and the scope and complexity of the problem, has prompted CEELI to re-think its approach to legal education reform. As a CEELI document reviewing efforts in Bulgaria put it: "As a result of a general lack of interest among Bulgaria's law faculties in undertaking reforms, CEELI's assistance has focused on providing students with opportunities for more progressive legal education outside the law school setting (and) more recently, CEELI's legal education work has focused on helping develop clinical programs."²

When law school administrators and senior faculty have resisted reform, CEELI has worked actively with the younger generation through a variety of means, including the formation of law student associations, encouraging membership of the associations in the European Law Students Association, participation in the Jessup International Law Moot Court competition, and in the development of student-edited journals and newsletters.

Another avenue for influencing how legal education is provided has been the willingness of liaisons to teach in the academies. The documents show that CEELI liaisons have offered lectures in each of the 22 countries, and have offered full-length courses in over half of the countries during the history of the program.

Conclusions Betting on the Next Generation

Assessing the impact of programs designed to introduce curriculum and methodological reform in law faculties is a difficult prospect. Individual faculty members clearly benefit from exposure to American approaches, and CEE/NIS law schools have benefitted from the sister law school programs and other means by which young faculty have gained international experience. The law schools have been enriched by the presence of American faculty members on campus for extended periods. One important impact is the introduction of for-credit practice-based learning experiences for students, the introduction of new, interactive courses, and the creation of practical, educational externship programs which actually give law students a valid experience as a "proto-lawyer," rather than a file clerk, as some respondents described their current experience. As a result of curriculum development workshops, CEELI has been able to provide reform-minded faculty with written local

² ABA/CEELI Briefing Book, Executive Board/Liaison Meeting, Bucharest, Romania, July 12 - 17, 1998. This volume is a useful country-by-country compendium of CEELI program highlights, and has been a valuable documentary resource for the preparation of this evaluation report, especially for those countries not visited by the evaluation team.

language materials on how to develop and implement practice-based teaching methodologies. By 1998, the combination of workshops, US training, curriculum and other “how to” handbook development, and follow up technical support from liaisons and other Legal Specialist has begun to show concrete results. At least eight legal education clinics have been established, and many more are under consideration. CEELI’s focus on “the next generation” has begun to show results as well, with CEELI supported law student associations formed in several countries, most notably in Ukraine.

Given the relatively low level of financial commitment dedicated to legal education reform, it is not surprising that results have been somewhat disappointing. Even the introduction of clinical experiences has, at times, been exceptionally difficult, as in the Romanian case where CEELI did everything it could to bring the Law School to the edge of developing a clinical education program at Bucharest University, but the course was offered only once. It is perhaps the size of the task, the resistance of entrenched senior faculty and administrators to change, and the history of disappointing experiences that contributed to USAID’s decision not to fully fund CEELI programs in legal education reform in the NIS countries, forcing CEELI to greatly reduce its own level of effort. Nevertheless, it should be noted that many respondents, including law students and some law professors, indicated continued interest in clinical legal education and efforts to introduce more practice-based teaching methodologies into law schools.

4 Legislative Assessments Giving Expert Advice on New Legislation

a Tapping American (and Western) Expertise

The CEELI legal assessment program is a small but active part of the overall CEELI menu of activities. Simply put, CEELI liaisons in the field through their networking receive requests for assessments by American legal experts of various draft laws under consideration by government and, sometimes, non-governmental sources. Upon receiving the request, CEELI organizes a panel of American and European experts, each of whom prepares a written assessment of the draft law, which is then synthesized into a single document in CEELI Washington before being sent back to the field and the person or organization which made the initial request. This process usually takes 5-8 weeks and involves an average of 10 volunteer experts for each assessment. Over the five years (1992-1997) for which cumulative data is available, CEELI has prepared 324 of these assessments covering nearly every topic of law, from uniform codes of military justice to commentary on a draft law of secured transactions. To supplement the specific assessments, CEELI also has prepared a number of “concept papers”, which lay out general principles and best practices for a broader area of law, such as human rights in criminal procedures. Many of the panels assembled for legal assessments and concept papers include, for substantive balance, a European legal expert.

The team carefully reviewed a large sample of legislative assessments prepared for Russia, Ukraine, Georgia, BiH, Macedonia, and Poland, as well as interviewed relevant respondents in all 8 countries visited to ascertain the quality, usefulness and impact of this part of the CEELI program.³

³ Although a number of assessments concern aspects of commercial law, the latter subject will be treated separately under the “Special Initiatives” section of the evaluation report.

The main findings are that the legal assessment papers are of generally high quality in terms of their analysis of legal and practical issues. Most showed good balance and sensitivity to various external factors and to the civil law context. The “turnaround” time from request to receipt of the finished assessment was considered by all respondents to be very quick, when compared especially to experience with a similar EU program. Respondents also reported that CEELI’s assessments tend to present a more comprehensive analysis because they include a comparative knowledge of both American, European, and international law. The team found in some instances that discussion between the recipient of the assessment and the CEELI personnel preparing the assessment does not occur to an efficient extent, or does not continue beyond completion of the assessment. In other instances, the team found more extensive discussion and consultation throughout the process.

The impact of the assessments varied considerably and was somewhat more difficult to ascertain. The team wanted to review the assessment process step-by-step, from request to preparation to actual use in the law making-process, but it was unable to meet with the appropriate “end-users” in most countries. From what evidence the team could assemble, the general finding was that respondents clearly value the assessments, and continue to request them. The number of requests in 1996-97, 72, was higher than in the two previous years, and almost as high as the 108 requests met in the first year of the program. In terms of legislative impact, the respondents in Georgia, Macedonia and Poland stated that the assessments were very useful as part of an ongoing technical advisory relationship between CEELI and the relevant officials or leaders. In other countries, the team could not measure impact well or at all (e.g., Russia and, to a lesser degree, Ukraine). CEE and NIS leaders who had used CEELI’s assessment service were nearly universal in their favorable comparison of the CEELI effort to a similar program organized by the EU.

In addition to legislative assessments, CEELI has, in many countries, assisted in the legislative drafting process directly, through US study tours, publication of manuals, workshops, and direct technical assistance. This technical assistance has been highly successful, and continues to be in demand. The materials provided by CEELI continue to be used in the actual drafting process, e.g., by the Rostov Regional Duma, and have been duplicated for dissemination in other regions of Russia and CEE/NIS.

Conclusions Assessments High Quality, Variable Impact

The Legislative Assistance program is a well-organized process which has mobilized several thousand American law experts, providing timely and free advice to CEE/NIS legal experts charged with drafting new legislation in all areas. Of increasingly high quality, its impact on actual legislation has varied. The process appears to have the greatest impact when assessment request and end-use is part of a more comprehensive dialogue between CEELI liaisons and the host country officials or leaders. Assessments are particularly valued by judicial reformers who were in positions of authority and could use the assessments to strengthen the reform effort. Also, an unintended benefit of the program is the knowledge of foreign law gained by American legal experts through their participation in the assessment program.⁴

⁴ This benefit could be generalized to a substantial part of the American legal community which has participated in the CEELI program. It is surely in the US interest to have had thousands of American lawyers,

Positive results have been achieved from CEELI's efforts to assist in the technicalities of legislative drafting. They are of continuing effect and appear to be sustainable.

5 Criminal and Commercial Law Reform

a Findings The Importance of Substance

No rule of law development program could suffice by focusing exclusively on the development of judicial and legal associations without engaging in the principle substantive areas which, after the fall of the Soviet system, would have to be overhauled. Indeed, CEELI's early proposals, and the briefings provided to the evaluation team by Justice Sandra Day O'Connor, underscore the centrality of commercial and criminal law reform as the primary purpose of the CEELI program. Without substantial reform in these two areas of law, both dismal failures in the Soviet system, the successful development of new democratic free market regimes would be sharply constrained.

A review of CEELI documents indicate that of the two regimes, criminal and commercial law reform, the criminal law effort has occupied a higher place in the overall CEELI level of effort. CEELI began its work in criminal law reform as early as 1992 with USAID support. By 1998, CEELI had active criminal law programs comprised of training, technical assistance, and criminal law drafting in 13 countries, mostly in collaboration with the Department of Justice (DOJ). In several countries, such as Bulgaria, Latvia and Georgia, CEELI focused on economic crimes, mainly corruption and its attendant money laundering. For some countries, Latvia and Poland for example, the only continuing CEELI presence will be through CEELI's DOJ joint venture.⁵

The commercial law program takes on different dimensions and character, depending on the country, the degree of support and guidance from USAID, and to some extent, the programmatic vision of the CEELI country director and successive liaisons. CEELI is visibly active in commercial law in 10 of the 22 CEE/NIS countries, although occasional forays into commercial law training show up as part of judicial or law association training. In a few countries, commercial law is or has been the major area of CEELI emphasis. Bulgaria is perhaps the most comprehensive commercial law effort to be mounted by CEELI, with more targeted technical assistance efforts found in Poland, Slovakia, Lithuania, Latvia and Croatia.⁶ In these countries a CEELI long-term legal specialist has been

judges, judicial officials and law teachers gain first-hand experience with the dramatic transformation of the CEE/NIS region.

⁵ As previously indicated, the evaluation SOW excludes coverage of the CEELI/DOJ program. It is mentioned here because CEELI's focus on economic crimes is associated with its USAID funded commercial law programs, and because for a brief period, USAID support made CEELI's criminal law program development possible.

⁶ The very comprehensive CEELI commercial law effort in Bulgaria has mobilized all of CEELI's types of resources, from legal assessments to full time Legal Specialists to address commercial law issues including intellectual property, bankruptcy, bank restructuring, capital markets, concessions law, small and medium enterprises and control of public corruption. Unfortunately, the team was unable to visit Bulgaria for a first hand analysis of the impact of this program.

assigned to work on specific areas of commercial law, such as collateral law in Latvia, and intellectual property in Poland. A final set of commercial law programs are those countries where the effort is mainly in providing systematic training through CLE programs mounted by CEELI-supported commercial law centers, such as in Poland and in Lithuania, or through a variety of local bar associations as is the case in the major Russian commercial law training effort.

The best examples of this kind of law reform reviewed by the team were in Russia and Poland. The findings in both countries indicate that these programs are well-attended, highly regarded, and have no real competition, although in Poland and Russia, international law firms and other donors will have “one off” conferences on special topics in commercial law. Sponsoring organizations in both countries recover costs through fees in more cosmopolitan areas, such as in St. Petersburg, but some organizations still resist charging for these services. Since most USAID strategic plans stress economic growth as a main objective, USAID is supportive of these training and development efforts and considers the objectives appropriate.

Conclusions Commercial Law, An Under-Exploited Resource

CEELI's early emphasis on criminal and commercial law reform played well to its philosophical and practical underpinnings, as well as being responsive to priority sectors for reform in the CEE/NIS. The team found most respondents highly responsive to CEELI and its partners' commercial law training programs. Also, the establishment of commercial law centers providing on-line and text access to US, Western and international law developments has been successful and increasingly well-used by the growing number of private law practitioners.

The high degree of variability in the level of effort of the commercial law program is difficult to explain based on the data at hand. Why is commercial law a CEELI priority, to some degree, in only 10 of the 22 countries? Part of the answer may be that USAID has assigned “commercial law” development in many countries, Russia among them, to for-profit contract firms, rather than to CEELI. Another probable factor in this finding is USAID's own structure. USAID's strategic objective frameworks usually place “rule of law” work under the management of the democracy and governance division of the mission, while “commercial law” work falls under the auspices of the economic growth division. These arguably artificial divisions often help determine how projects are procured, including identification of the pool of appropriate implementors. In many of the countries where other contractors have been charged with implementing such programs, CEELI has developed informal working relationships with these firms, whose limited time horizons and lack of knowledge and ability to access indigenous rule of law organizations creates an opportunity for synergy and cooperation. As the process of developing new commercial codes comes to a close in CEE/NIS, the question of who will be responsible for follow-up training is increasingly on the table. CEELI's partners in a number of countries are well-placed, with some support from CEELI, to undertake this responsibility.

6 Special Initiatives

Most CEELI programs offer support for reform of major processes and elements of the institutional arrangements for a rule of law regime, such as an independent judiciary, self-policing and service-

oriented legal associations, and broadly conceived and demand-responsive continuing legal education programs. In several instances, CEELI has developed several more substantive programs which use law to achieve some other specific societal goal. For example, following a major effort during the first few years of the CEELI program, CEELI continues to work on issues of Constitutional Law in several countries where constitutions have been recently passed or rewritten, as in Ukraine and BiH. Another area where CEELI is beginning to develop a program initiative across several countries is in media law, examples of which are analyzed in the Ukraine and Georgia country reports. In this section three other significant programs are briefly assessed: 1) protection of the environment, 2) protection of women against domestic violence and unfair treatment in the work place, and 3) support of Russia's jury trial initiative.

These "special initiatives" are discussed below, although they are not expressly included in the evaluation SOW, because they constitute significant portions of CEELI's USAID-funded programs in several countries visited. In some instances special initiatives have represented a majority of the program funds at a given time for that country.

a The Environmental Law Initiative

CEELI's environmental law initiative is a regional program with a strong country focus in Ukraine, Armenia, and soon in Moldova. In Ukraine, the program is very successful and illustrates that one way to build respect for rule of law is to demonstrate that law is an effective way of achieving socially desirable public policy outcomes. Ukrainian environmentalists, the legal profession, and ordinary citizens have prevailed in disputes with government and non-governmental violators with the assistance of CEELI-supported Environmental Public Advocacy Centers (EPACs), either through settlement mechanisms or in litigation. Aggrieved Ukrainians can now turn to environmental law outreach centers and clinics (EPACs) in four major cities. This highly successful program is fully described and assessed in the Ukraine country report. Another EPAC has been established in Armenia at Yerevan State University. In addition to providing pro bono legal advice on environmental disputes, the EPACs also conduct training programs for members of the judicial establishment, and provide informational outreach and networking, not only at the state level, but in the international arena as well.

The environmental law initiative also has a strong regional component, including publication of the Environmental Advocacy Newsletter and network. Other projects under this initiative include preparation of legal assessments, CEELI advisory participation in international bodies regarding environmental law issues, and the organization of regional workshops and conferences, usually in conjunction with a local EPAC.

To advance these various activities, CEELI now regularly recruits liaisons with environmental law backgrounds for positions in Ukraine and to support regional activities.

b The Women in Law Initiative

Although not a separate initiative in the formal sense of the environmental law program, the increased activism and awareness of the problem of women's rights and equal treatment has

generated local NGO initiatives which have, in some countries, found a welcome partnership with CEELI. Moreover, the team notes the high level of women judges in the judiciary, the advocacy, and to a lesser extent, among commercial lawyers. It is not surprising that many of CEELI's partner organizations have been initiated by women, as in Poland, Macedonia, BiH, Russia, Ukraine. At the same time, having a majority of women in the judiciary does not translate into an activist attention to women's issues in the courts. This may be due to the fact that, in large part, the state procuracy is much more the domain of men. Getting women's issues into the courts is a major objective of many of the CEELI programs, an objective most clearly articulated in the USAID supported Russian program.

The Russian program is the most visible of the women in law initiatives. An analysis of the documentary record yields six additional CEELI programs in which there has been a programming effort directed toward women's issues and to enhancing the role of women in the legal profession. Surprisingly, the most active of these additional programs appear to be in Albania and Croatia.

c The Russian Jury Trial Experiment

A special initiative was the Russian jury trial program, which focused on the training and changed institutional roles and arrangements necessary to reintroduce jury trials to the Russian legal system, starting with 8 pilot oblasts. This program lasted from 1993 to 1996, and was noted for its high degree of integration of most of the elements of a successful jury trial system, including training and guidance for the changing roles of judges, procurators, and advocates, as well as attention to the physical layout and informational requirements of jury trials. The team found that Russian participants in this program were highly motivated, and that they attributed their motivation, new skills and commitment to the CEELI program. Jury trials have not been introduced in the remaining 81 Russian oblasts, largely due to financial constraints, as well as due to misconceptions that juries are "soft on criminals", a serious social concern in Russia. Still, jury trials have continued in the pilot oblasts, with the number of such trials increasing each year from 376 trials in 1995, to 553 in 1997. The first six months of 1998 produced 281 jury trials. For each year, the percentage of verdicts returned and "capped" by the Presiding judge has increased, from 68 percent in 1995 to 77 percent in 1998, suggesting that the system is maturing as people and jurists gain more experience. We do not have data from the other 81 oblasts, so we cannot compare jury trials results with those from the other oblasts. However, the data from the eight pilot provinces do suggest a positive trend, both in the use of the system and in the results obtained. With respect to the "soft on crime" issue, the percentage of acquittals returned by Russian juries is relatively stable at about 20 percent. Criminal rights advocates might find this an unacceptable figure, but it does not support the contention that Russian juries are soft on crime. Although the CEELI effort is no longer part of its workplan, the training manuals prepared for Russian jury trial lawyers continue to have lasting impact. The CEELI program is fully described in the Russia country report.

Conclusions Demonstrating that Rule of Law Can Work

These special initiatives have been singled out for several reasons. First, they are examples of the possibilities of synergy and cross sectoral linkages between a concern for rule of law and other policy

issues of concern to citizens in CEE/NIS ⁷ Equally important, they engage the ordinary citizen in the process and function of legal decision-making, as in the jury trial experiment As one reaches beyond the legal profession, the level of interest in the success of an independent bar association dwindles rather rapidly These kinds of initiatives help to link law and democratic values and behaviors in ways not met by other programs Citizens are concerned with environment, with abuse by the criminal justice system, with their rights in general, and with corruption They want to feel that the courts and the legal system are responsive to their needs, and accessible to their complaints

Increasingly, CEELI and USAID are beginning to link up rule of law with other areas of public policy and development In the future, CEELI and USAID might address issues of property rights as a factor in increasing agricultural productivity, or malpractice issues as a factor inhibiting the proper delivery of health services

These special initiatives are relatively new, the oldest in environmental law having become operational only in 1994 with the creation of the first EPAC in Lviv, Ukraine Already this program has demonstrated important impacts, not only in bringing environmental cases to success in court, but in the far more important area of increasing public confidence in the rule of law The team concludes that public confidence in the judiciary must be addressed from two perspectives 1) from within, i e , in the development of judicial ethics, better selection and appointment processes, and the provision of more and better-trained and better-equipped judges and lawyers and 2) from without, i e , the citizens' perception and reality of efficient, effective and fair judgments Any rule of law program must address both dimensions

7 Regional Initiatives

CEELI has engaged in a number of activities on a regional level These have included multi-country workshops (in particular in the CEE, the Caucasus, and Central Asia) on a variety of legal reform topics, including judicial independence and training, and clinical legal education These workshops have been particularly useful in that they provide an opportunity for judges and lawyers to interact with their colleagues in the region in a mutually constructive manner, and to learn from each other about the problems they are facing and the solutions they are devising to further legal reform in their countries

CEELI's largest regional initiative, and the one for which it has a separate, regional line item in its CEE budget, is the Regional Institution Building Advisor (RIBA) The RIBA position is paid, and is filled by a non-lawyer with NGO development expertise with experience in the region The RIBA's

⁷ The team was surprised that USAID democracy offices and those concerned with economic growth seemed to have little program interaction, except in those relatively few countries where CEELI has been harnessed to provide commercial law drafting expertise USAID officers concerned with economic-growth objectives state that good commercial laws are drafted with support from USAID contractors, but that implementation is breaking down An obvious strategic synergy could be achieved by linking commercial law drafting contractors with CEELI's continuing legal education programs (for the judiciary and for lawyers' associations) In some countries, e g , BiH and Macedonia, this linkage is being established informally by CEELI and the commercial law contract party This apparent failure to program for strategic linkages is called by some at USAID "stove-piping," and is attributed in part to the strategic planning process as well as normal inter-office competition for budget and mandate

job is to assist the liaisons and CEELI's local partners to address issues common to those partner organizations relating to their long term sustainability. Working closely with the liaison, the RIBA makes periodic visits to the local partner organizations to advise them on issues such as strategic planning, fund-raising, and other developmental issues. This past year the RIBA was posted to Riga, Latvia, where he worked with the Latvian Judicial Training Center (in many ways also taking the place of the liaison, since no liaison was posted there due to country funding restrictions), but also traveled to and provided support to institutions in Macedonia, Slovakia, Lithuania, and (subsequent to the evaluation team's visit) BiH.

The liaisons and the local partners interviewed generally found the contribution of the RIBA useful and relevant. CEELI plans to post a RIBA in the Western NIS in the next year as well (to focus on helping the EPACs address some of their institutional development needs).

In addition, CEELI also posted a Regional Judicial Specialist to CEE (1996-97) and to Western NIS and Central Asia (1997-98) to support judicial associations and training centers and to transfer lessons learned from one country to another. Both the Regional Judicial Specialist and the RIBA have been used to train other CEELI representatives by sharing experiences at the CEELI Winter and Summer meetings.

III CEELI'S PROGRAM MANAGEMENT

A Findings Managing a Volunteer Program

1 The Structure and Function of the CEELI Washington Office

There are several special features of the CEELI approach to providing assistance that distinguish it from most other USAID providers. First, CEELI relies on volunteers to provide and manage the menu of rule of law technical assistance, training, and institutional capacity building activities it implements. In this sense it is somewhat comparable to the Peace Corps. Each year, CEELI must recruit, process, screen, interview and select roughly 30 new liaisons and legal specialists for field placement. This is a continuous process. Placing high quality volunteers in the field is critical to CEELI's success. In addition to the prestige of the American Bar Association, CEELI volunteers bring to their jobs a different kind of background and experience than the traditional developmentalist, and rely on their enthusiasm and perseverance as much as their legal and management skills to get the job done. Getting the highest degree of "fit" between the liaison and the program requirements in a specific country is the biggest challenge facing CEELI management.

Second, CEELI's initial approach was driven by the urgent needs of CEE and NIS countries and the requests of the host country nationals for immediate assistance in developing legal systems consistent with free market democratic regimes. At the beginning of the CEELI program, moreover, CEELI focused on mobilizing Western legal expertise to meet these needs. By 1995, the US government recognized that this transition would require more time than originally envisioned. USAID decentralized its program and developed "mission"-like offices in most of the CEE and NIS countries. Cooperative agreements giving USAID more direct involvement in the operations of

organizations like CEELI replaced the earlier grant-funding approach. As USAID's strategy became more developmental, so did CEELI's, and in the process the organization has taken on a more strategic, long-term vision, with more attention to development issues such as institutional capacity building, long-term legal educational reform, and others. Because of this unique history, CEELI did not have the kind of long-established management structures that other USAID providers feature, and has had to develop rapidly to catch up.

Third, although it increasingly describes its various activities as projects, it is not a "project implementing" organization in the way USAID normally defines it. CEELI does not, normally, bid on USAID requests for proposals or implement time-limited projects complete with a chief of party, project team and office, and a budget for short term experts, or training, procurement of equipment, etc. Because of this CEELI has not developed the usual array of cataloguing and synthesizing its experience, its clientele, and its various project achievements.

Fourth, CEELI was established as a USAID regional bureau grant-supported "program" to be operational in all CEE/NIS countries where USAID is active. In 1996, the grant was changed to a cooperative agreement between USAID/ENI and CEELI. With the exception of Russia and Kazakhstan, CEELI's paid professional staff, country and program directors, are based in Washington, DC. Program continuity, proposal development, and most reporting and problem solving functions are the responsibility of Washington staff. While individual USAID missions may negotiate the annual budget and the workplan objectives at the country level, the mission is not in a position to terminate CEELI's presence in a country. The management implication for CEELI is to substantially increase the complexity of its relationship and accountability to USAID, with funding, program workplan decisions and day to day relationships shaped by USAID missions, with other budgetary, procurement and over all policy relationships managed by ENI/DGSR office.⁸

To manage this rather unique approach to development assistance in 22 countries, CEELI has a full-time paid staff of 29, 27 of which are in Washington, DC. They are organized largely by regions, countries and, for some positions, special functions such as the Director for Legal Assessments, or the Chief Financial Officer. Many of the country and regional directors also take on functional responsibilities, such as legal education programs or bar association development. Program Directors supervise and work with Country Directors to implement programs, prepare proposals, and assist in the ongoing process of identifying and placing volunteers. Program Directors work more directly with USAID/ENI in Washington, whereas Country Directors, according to the ABA/CEELI Background Materials briefing book prepared for the evaluation, "are responsible for day to day implementation of CEELI's programs in their respective countries." It is the Country Director, not the CEELI in country liaison, who is formally responsible for maintaining relations with the USAID mission, a task requiring fairly frequent visits to the field.

⁸ According to ENI/DGSR officials, the Washington office does not "manage" the CEELI cooperative agreement. This is the responsibility of the individual missions. Washington responsibilities are for "procurement" and evaluation. The team agrees that substantive program management resides in the field. However, field missions and CEELI look to DGSR leadership for Agency policy, facilitating relationships, solving problems, and for helping to establish a harmonious relationship.

An examination of the biographical data of 15 key CEELI staff members reveals that all are attorneys with a minimum of 3-5 years professional experience prior to joining CEELI, and seven feature substantially more experience. Four had worked in international development organizations such as World Learning, and were familiar with USAID proposal and management requirements. Almost all had been engaged in some kind of international legal work before joining CEELI. Others, such as CEE Director Lisa Dickieson and NIS Director Michael Maya served as CEELI liaisons before joining the full time staff. The data also suggest that while most senior staff have substantial legal and international experience, most did not have traditional development experience before coming to CEELI.

CEELI's Executive Director, Mark Ellis, has 6 years of private practice, but could be better described as a legal scholar and rule of law consultant and activist. His initial international experience was as a Fulbright Scholar in Zagreb. He has published extensively on matters of legal transformation in CEE/NIS, with special attention to commercial law developments in the region. In addition to his CEELI role, Ellis has taught international investment law, is an advisor and consultant to the IFC, the World Bank and the United States Information Agency.

An issue which emerged from the discussions with USAID and CEELI is where responsibility for program management lies. The team found that although CEELI Country Directors were conscientious in their efforts to meet with USAID mission officials, and to keep them fully informed, the fact that they are positioned in Washington rather than the field inhibits the free and frequent flow of information and consultation USAID enjoys with its other "partners." Liaisons reported that they do work hard to keep mission officials informed, but they are not the persons primarily responsible for maintaining the relationship with USAID, nor are they able to speak authoritatively for CEELI in matters involving CEELI - USAID negotiations or conflicts.

2 Liaisons and Legal Specialists

Detailed analysis of over 350 liaisons and legal specialists would be impossible, and generalizations run the risk of ignoring the rich diversity of experience and background CEELI's volunteer liaisons bring to their assignments. Some quantitative statements can be made, however. Contrary to some statements made by critics, liaisons are neither particularly young nor lacking in legal experience. On average, liaisons are 38 years of age, possessing about 11 years of legal experience before joining CEELI. Thirty three percent of the liaisons had more than 15 years experience, while 14 percent, styled associate liaisons had less than five. It is normal CEELI practice to pair a more mature liaison with a more junior person, as the team found in Ukraine, Georgia, BiH, and Macedonia. CEELI has increasingly selected liaisons who have substantial management or other organizational experience in addition to their legal credentials. Some liaisons had other careers in business, media, or government before becoming lawyers, others have been activists in operating legal clinics, managing law firms, or assuming leadership roles in local, state and national bar associations. Liaisons report that their ability to organize, persuade, broker and facilitate their relationships with their host country partners is every bit as important as their legal skills and experience.

A common criticism of the CEELI program from many local respondents, and seconded by some USAID and other American critics, is that CEELI liaisons and specialists do not stay in country long.

enough, and that CEELI programs lack continuity because of the rapid turnover. An examination of the tenure pattern of CEELI liaisons shows that the average length of stay in country was about 11 months during the period 1992 - 1995 and in several instances, much shorter than that. This average has now increased to 18 months, as more and more successful liaisons are extending for a second term. Without comparative data on other contractors and NGOs, the team can draw no conclusions about whether this average term of service is significantly shorter than long-term experts placed by other USAID implementors. The team notes, however, that CEELI is considering steps, including increasing its resettlement allowance, to encourage liaisons to stay even longer.

On the continuity issue, the team examined the liaison arrival and departure times in eight countries to determine whether there were significant gaps. The general finding is that most liaisons overlap their predecessors by a month. Also, the appointments are staggered so that in most countries with two liaisons in place, one will have at least six months of experience. The team found that in one country, there was a gap between the departure of one team and the arrival of a second. In this instance, the liaisons reported that it was difficult to get oriented or to know what had gone on before. Moreover, the previous liaisons had left little in the way of documentation or guidance which would have helped the new team to move quickly. In the main, however, it is the job of the CEELI country director to maintain continuity and to insure that new liaisons are well briefed and do not have free reign to "do their thing." Rather, the team found that from the recruitment and placement process to the actual placement of the volunteer in the field, the CEELI staff in Washington has program continuity as a very important criteria of selection and placement. CEELI has developed a template or check list of some 20 dimensions of the ideal volunteer, and while few meet all the criteria, it is obvious that CEELI has made a genuine and largely successful effort to improve its performance in this, most critical area.

An interesting finding is that as the program has matured, and more liaisons have returned to the US with a solid liaison experience, an increasing number have decided to shift or redirect their careers, often in the direction of international practice, or into the international development field. CEELI reports that approximately 24 former liaisons and specialists have been hired by international development companies. For example, in BiH, Georgia, Russia and Macedonia, for-profit firms have hired former CEELI volunteers to implement USAID funded projects. CEELI has benefitted as well, as an increasing number of CEELI appointments are being made from a growing pool of former liaisons. For example, the senior liaison in Macedonia, Terry Rogers, had been a liaison in Central Asia, and two former Russia country directors served as liaisons in other countries, as have several other senior staff in CEELI's Washington office.

3 Liaison Performance

Careful selection and management from Washington can accomplish a lot to increase the likelihood of CEELI achieving its objectives. Whether the person is young or old, with great or only limited experience, the crucial part of the equation remains the liaison's performance in the country of assignment. Because the liaison is a volunteer, some in USAID have questioned whether one can expect the same level of performance from them as one can from a paid professional development expert. Even if the liaisons are energetic and good at personal relationships, the question is whether one can expect them to work toward workplan objectives in which they may not have participated. One of the reasons some liaisons leave their US jobs is to have an opportunity to be helpful and to exercise their own judgement in an environment of relative organizational freedom and opportunity. "How do you manage a person like that?" goes the argument.

The team spent a considerable amount of time examining liaison performance, in interviews with host country partners, USAID field officers, private interviews with the liaisons in the six countries visited, and by examining work products first hand. The results of these interviews and reviews, as well as the team's own observations of liaisons working in many settings, provides a strong base for our findings, which are several.

First, liaisons are as hard-working, enthusiastic, and as committed to their tasks as any group of individuals in the development business. Second, liaisons are legal professionals. They are valued for the quality of their skills and judgement, and because they represent the US legal system, not because they are volunteers. Third, liaisons rarely tell local partners what they must do. Rather, they work through the establishment of relationships built on trust, they find areas where even the most resistant reactionary might be willing to move, they build and support coalitions of reformers, providing them with information, technical support, and the power of moral suasion. They nudge, cajole, persuade and show by example. Liaisons lack both the authority that comes from being part of a traditional USAID project, and the budget support to provide the incentives so often necessary for cooperation. To achieve anything, they simply must give good advice, a skill in which lawyers should excel.¹ Fourth, liaisons increasingly act as brokers and facilitators between the reformers, whether they be judges, lawyers, or law students, and the community of funders and potential supporters. To do this, they must be seen not merely as "instruments of American policy," but as influential partners with Macedonian or Georgian reformers in the long and difficult process of developing a civilized rule of law regime.

The team found that liaisons have been remarkably successful in helping their various partners to raise financial and other support. The Open Society Institute (Soros), Eurasia Foundation, DemNet, USIS, UNDP, US Embassy Democracy Commissions, Peace Corps and European organizations have been active partners with CEELI in funding or providing other resources in support of rule of law activities for local organizations. As one two-time liaison put it, "I'm a scrounger. I am always trying to find ways to get more resources for our projects."

Liaisons, for the most part, are not "development professionals," although they learn quickly much of the language of development (sustainability is not a word most American lawyers from Portland, Oregon would have found much use for before becoming CEELI liaisons). They are frequently

frustrated by the procedural and reporting requirements necessary to their relationship with USAID. They are unmystified by the language of development, preferring to believe that with enough reason, trust, good effort and positive thinking most obstacles can be overcome. They are impatient about bureaucracy, have little sense of protecting their “domain,” and are prepared to reach out to any source which will enlist in moving the process forward. They resent micro-management, and are impatient with USAID’s constant need for quantifiable results. They tend to see their purpose as helping their local partners make progress in their terms and their pace. Although most recognize the need for good relationships with USAID, they do not see USAID as their primary client. Managing USAID is the job of the paid professional staff in Washington.

4 Making the Best Use of Local Hire Staff

The team found that CEELI’s staff interpreters are first class. Mostly young lawyers or law students, these professionals also do much of the legal document translation from English to local languages, and the reverse, not only for CEELI, but for official bodies as well, thereby making an important substantive contribution to rule of law development. Another important role for local staff is to serve as institutional memory and maintain continuity. In Russia, many of the local staff had been with the program from its outset, and were experts on both CEELI programs and Russian conditions. In all countries visited by the team, CEELI’s interpreters were clearly well-known in legal circles, and enjoyed extraordinary access.

The best use of local staff found by the team was in Macedonia, where CEELI’s two local hires are experienced attorneys. Each is paired with one of the CEELI liaisons to work on specific projects, such as the court administration reform project, but each also has projects and relationships for which they are independently responsible. Because they are not law students, they are not “temporary,” but have a longer term commitment to CEELI’s program objectives and have become a critical part of CEELI’s institutional identity in Macedonia. The team learned that in at least two other countries, Croatia and Tajikistan, CEELI had placed a mature local lawyer in a program position, often exclusively responsible for maintaining a CEELI presence.

5 Reporting, Analysis and Documentation

With the revision of the early grant agreements to a cooperative agreement in 1995-96, the level of USAID mission and regional bureau management of CEELI increased considerably. Contributing to this was the introduction of the USAID strategic objectives planning process, a part of the agency’s commitment to become a lead agency in the re-inventing government movement, and to meet its obligations under the new Government Performance Reporting Act, which requires government agencies to report to Congress quantitative measures of results.

Under these new arrangements, CEELI is required by USAID to report on its activities every 6 months. It also prepares monthly activity reports at the field level. Each year, an annual proposal and budget negotiation process begins shortly after the closure of the previous 6 month period. The result is a virtual torrent of program reporting, documentation, proposal development, and budgetary justification. The amount of program documentation is prodigious, as might be imagined with 22 country operations in a given year preparing 264 monthly reports, negotiating 44 workplans and

objectives, all of which must be synthesized each year into a proposal for CEE and another for NIS for agreement with USAID/ENI. All of these written reports have been supplemented by various, more or less regular face to face meetings, oral reports and e-mails.

The team addressed the issue of whether the vast amount of reports required by USAID were helping USAID to understand the strengths and weaknesses of the CEELI effort, and in stimulating an informed dialogue between USAID and CEELI on what needs to be done. Equally important was whether CEELI was using its own information to increase its own knowledge of what worked, what did not and why, so that it might improve its own performance as an organization.

On the first point, the team found that while most cognizant USAID officers know about the reporting, many paid only scant attention to what they received. They were too busy, and the reports did not capture their attention. In an effort to understand what CEELI was doing, and to answer the question as to why the reporting system was not working to inform USAID, the team analyzed results reporting in all of the eight countries visited.

The principle findings are that, first, CEELI reports tend to focus on activities more than results. CEELI liaisons, as good lawyers, record everything they do that is remotely related to their objectives. A training course may get equal treatment with the formal acceptance of a code of judicial ethics adopted by a judges' association. It is difficult to determine from these reports whether CEELI has achieved a major breakthrough, a lasting result, or has simply organized a meeting. Related to this is the problem of causal sequencing. USAID needs to know whether the training course, the study tour, the organizational meeting has led to a "result". The team found that with rare exceptions, CEELI's reporting did not focus on results, or on the chain of events which could be advanced to plausibly conclude that CEELI's work had major impact.

Moreover, the monthly and 6-month reports rarely refer back to the agreed objectives in a systematic, side-by-side manner, which would allow the busy reader to say, yes, they were going to have this or that result, and here is the documentation which shows they did it, or not. Reviewing reporting documents over time, the team found that some CEELI offices were doing a better job of relating their reports to previously agreed objectives, and to demonstrating linkages to USAID's strategic objectives. However, these instances were few.

The team suggests, as explained in the Recommendations section, that CEELI work with USAID to devise a more results-oriented reporting process. However, the team recognizes the challenges of reporting results in the democracy and governance sector generally, and the rule of law area in particular.

Seeking to understand whether CEELI had developed a capacity to improve its performance, the team looked for evidence of CEELI-prepared analyses, strategy papers, and evaluations of its own efforts. The team found that most of CEELI's analytic efforts went into its proposals to justify USAID's continuing financial support. The team was unable to find much evidence of this kind of organizational stock taking or serious analysis leading to the development of a CEELI strategy beyond that required by the USAID reporting and proposal system. For example, a careful analysis of CEELI's experience in developing Judicial Training Centers in Latvia, Lithuania, Bulgaria, etc.,

would have helped liaisons develop similar objectives in Georgia, Macedonia, BiH and Poland. CEELI asserts that limited resources and the priority of implementing programs make it challenging to undertake extensive analysis beyond what USAID already requires, and points out that many “lessons learned” and like analyses are included in the final reports of liaisons and legal specialists, as well as in other documents. In addition, CEELI also points to the institutional knowledge of its DC staff. CEELI recognizes that it could do more to catalogue and synthesize this information, but contends that restrictions of time and funding make it difficult to do so.

6 The Question of Costs

The SOW directs the evaluation team to examine the relative costs of organizing and putting into the field a CEELI-type operation, in comparison to a more normal, for-profit or NGO project implementation team.

USAID has invested almost \$34 million dollars in CEELI’s program since 1992. Dropping the highest program, Russia, at \$6.2 million, and the lowest, Tajikistan, as well as the \$1 million for regional programs, the annual program funding for each country in CEE/NIS over the entire 7 year period is an average \$176,000. The CEELI program in Ukraine, a country which has received substantial foreign assistance from the US, has received \$2.9 million over 7 years, or an average of \$386,000 each year. Ukraine is the second largest CEELI program. Poland, a success story for US policy and for the Polish people, has received \$1.8 million for commercial and related rule of law development by CEELI, or about \$257,000 per year.

To put these amounts in perspective, the cost for one year of putting a single expert in the field for a typical for-profit rule of law firm would vary from \$170,000 to over \$200,000, depending on the seniority of the person, the size of the family, schooling allowances, etc.⁹ This is about the same amount CEELI receives to operate a one or two liaison office in each country. The cost of a CEELI pro bono liaison ranges from \$30,000 to \$42,000 per year, depending mainly on the local cost of housing and food. From observation, CEELI offices and liaison accommodations are very modest, even sub-standard in some instances.

The purpose of this comparison is to emphasize two findings. First, although six USAID missions have established Strategic Objectives focused on rule of law development, this has been a relatively recent development, leaving 16 other USAID countries without such clear objectives. Second, although the aggregate amount given to CEELI over 7 years is impressive, on an annual country by country basis, the CEELI grant and cooperative agreement has been very modest. USAID missions have generally given rule of law development a low priority. Consequently, the amount of financial support given to CEELI has been exceptionally modest.

Not surprisingly, a CEELI program in a typical CEE/NIS country is substantially cheaper than that of a for-profit firm working in the rule of law area. But is CEELI making the most efficient use of

⁹ The source for this estimate is from USAID/ENI based on figures provided one of the for-profit rule of law contractors. The range was corroborated by discussions the team leader had with several USAID officers, and by his own experience as a former USAID senior officer.

the funds it does receive from USAID? Most people at USAID concede that the cost of CEELI's field operations is very low. As one USAID representative put it, "it is a high value, low maintenance operation. We get more bang for the buck from CEELI." Others contend that CEELI's highly centralized management operation in Washington is too expensive, citing a USAID calculated figure for CEELI of 42 percent, compared to lower costs for Washington staffs found at for-profit rule of law contractors.¹⁰

A third factor in considering costs (and benefits) of the CEELI operation is the leveraged value or the opportunity cost of CEELI's pro bono service. CEELI states that the estimated value of legal expertise provided by the American legal profession is 202 percent more than the dollar value of all funds received from USAID. A dollar from USAID allows CEELI to leverage \$2 worth of legal expertise. The team examined the issue of opportunity cost and leveraging and, based on its findings, agrees that CEELI is leveraging considerable technical value through the pro bono system. Estimating the value of volunteer contributions is a difficult task, but the team agrees with CEELI's claim that the overall estimated value of CEELI's pro bono service substantially exceeds the amount of USG funds invested in the program.¹¹

A final observation about costs and values is worth noting. CEELI has a small grants program, called the Advocacy Grants, which is used in most cases as start up funding for various associational partners such as the Iustitia in Poland, Justo Titulo in Ukraine, or the Macedonian Legal Resource Center. These grants are very small, usually in the \$1500 to \$3000 range, although a few have reached \$30,000. The team found these grants well used and generally well documented. Nevertheless, CEELI lacks substantial project funding for these kinds of purposes. Also, CEELI lacks substantial project budget for such normal project activities as US training, equipment procurement, or project office expenses including the hiring of local legal consultants. This has motivated CEELI to be extraordinarily creative and aggressive in leveraging its modest resources against a variety of other funding agencies. It has had substantial success in this endeavor, generating about \$2.1 million in grants for its partners from some 25 different US and international public and private organizations.

7 The USAID - CEELI Relationship

¹⁰ USAID correspondence to Ms. Margo Squires, US Department of State, 1998. The CEELI indirect cost rate is 16.7 percent, the amount charged to CEELI by the American Bar Association. However, CEELI's Washington office charges to the USAID budget other costs, such as office space rent, which might be considered "indirect costs" as well. The SOW for this evaluation requests the team to develop a "formula" by which the costs of putting a liaison in the field can be fully costed. As noted, an average liaison costs from \$30,000 to \$40,000 per year, but the additional cost of backstopping that person cannot be determined without also sorting out overall indirect from direct program costs incurred in the Washington office. This is a task not contemplated by the SOW, and one requiring the skills of an experienced CPA.

¹¹ CEELI estimates this value by calculating the number of pro bono hours contributed by all CEELI volunteers at an arbitrarily selected but relatively modest opportunity cost rate. Since most liaisons have left their previous employment with no plans to return, there is no opportunity cost for their employers in the strict sense. A different approach would be to simply calculate the daily rate USAID would pay on average for legal technical assistance times the total number of pro bono days supplied by CEELI. The total is still very positive, although less than the CEELI estimate.

The team found that both CEELI and USAID management have made considerable progress in overcoming a previously disputatious relationship. Both sides appear to be committed to developing a harmonious and productive partnership. The SOW does not direct the team to unravel the history of this complex and often conflictual relationship between CEELI and USAID. The SOW does ask questions which are pertinent to some of the allegations, and the team has done its best to present the record in as objective a manner as possible.

USAID leadership was candid in its assessment of CEELI's strengths and weaknesses in sessions with the evaluation team. At the personal level, USAID was by and large highly complementary about the quality, dedication and productivity of the CEELI field operation. At a structural level, where USAID missions had developed rule of law Strategic Objectives, as in Russia, Ukraine, and most recently, Georgia, USAID leadership has, for the most part, struggled with the problem of how best to utilize the unique CEELI program to advance mission objectives. The solution appears to be to assign CEELI broad training and professional association development responsibilities, while at the same time using for-profit firms to implement Ministry of Justice support programs, including the development of Judicial Training Centers. This rough division of labor has met with some protest by CEELI, which argues that its low cost, ability to draw upon the US legal profession for high value technical assistance, and its already existing record of experience with rule of law development in the country should obviate the need for USAID to enlist the services of more expensive for-profit firms.

In missions where rule of law was not a strategic objective, USAID has placed CEELI either under its civil society objective or one of its economic growth objectives usually with relatively modest funding levels described above.

The team found that the key structural issue was not of a formal bureaucratic nature (e.g., where to fit the pre-existing CEELI program into a new strategic framework). Rather, in some missions, where there was little appreciation for or interest in the more general rule of law programming undertaken by CEELI, missions continued to support the program at relatively modest levels, for reasons which have more to do with the visibility and status of the ABA and the interest in Washington in maintaining the program. While it may be too strong to say that many missions "tolerated" the CEELI program, there is little doubt that mission leadership prefer to have substantially greater control over their implementation "partners" than may be possible with the CEELI program.

There is evidence that some USAID missions are developing a more positive and productive relationship with CEELI, beyond simply tolerating their existence as a "political" program. A measure of a shift in USAID appreciation of the solid work being done by CEELI is the level of budgetary support provided by the missions to CEELI country programs. Of the 22 country programs, USAID increased the 1998 CEELI budget from 1997 levels in 10 countries, and added a new country, Serbia, to the CEELI program. Of the countries with decreased budgets, two are in their last year, and one or two are operating in very restrictive political environments. These budgetary increases are consistent enough to indicate two things: first, USAID is developing a greater understanding of the importance of rule of law as part of its overall growth and democracy

strategy, and, second, that CEELI is developing a more effective niche in USAID thinking about how best to achieve results in this difficult arena

B Conclusions

CEELI has evolved considerably from an organization that was brand new in 1991, created for a specific purpose in a specific region, and lacked experience in dealing with USAID or the challenges of providing long-term development assistance. A major conclusion is that CEELI has responded to many of the criticisms made by USAID and has learned from its own experience. It has improved over time its management, the quality of its personnel, and the consistency and coherence of its programs. Although these programs are by the nature of the funding structure relatively modest, CEELI -- especially in recent years -- has developed a record of significant achievement. If CEELI can be criticized, it is in part because its early approach relied on its own dedication to addressing the urgent needs of CEE and NIS countries, as well as the commitment of right-minded leaders to rapid reform. Perhaps it could have conducted a more extensive appraisal of vested interests, deeply embedded institutional structures, and the resistance to change by generations of leaders. Even today, CEELI may err on the side of believing it can do more than is politically possible. Yet this kind of faith is necessary to any good development program, and the team has seen first-hand what can be done by CEELI liaisons who are long on enthusiasm, have a problem-solving approach, and the commitment to working in partnership with like-minded reformers who desire change.

The team also concludes that some of the difficulties between USAID and CEELI are structural in nature. CEELI's cooperative agreement with USAID/ENI is a case in point. A program which relies on USAID missions for the money, but houses some of the "political" management in a central organization which has little control over the activities or objectives on the ground, makes little sense. There is too large a disconnect of budget from management responsibility for this kind of agreement to work well. USAID Russia recognized this when it moved to a "bi-lateral" cooperative agreement directly with CEELI. A second structural issue is that some at USAID consider CEELI a "political" or "entitlement" program, largely because CEELI does not compete in the formal sense for its funding against other potential rule of law vendors. While this arrangement helps secure a certain level of core support, it does little to put CEELI into a position where USAID would be prepared to assign CEELI the responsibility and resources for a major project. A third structural problem is that until very recently, USAID's interest in "rule of law" as CEELI practices it has been limited. For some missions, the right "laws" were necessary to foster foreign investment and to promote economic growth, but this was not "rule of law." In these instances, the mission approach to legal drafting was to offer contracts to firms which would help write a wide variety of commercial laws linked to achieving its economic growth objectives. CEELI has participated in some of this effort, most notably in Bulgaria, Poland and the Baltics, but in the main, CEELI has by choice or default worked on much broader rule of law issues relating to the performance of the judicial system, the bar associations, and legal education in all its various forms. These "cross-cutting" programs have been difficult to fit into USAID's strategic planning process, leading USAID to take a tolerant, but minimalist approach to CEELI's programs in some countries. CEELI has sensed this lack of interest, and has responded by finding its allies elsewhere -- in Soros, USIS, or the US Embassy.

The team concludes that if the current positive momentum can be sustained, both CEELI and USAID will want to find ways to become better partners in serving the larger American interest in advancing the rule of law in CEE/NIS. USAID must begin to take CEELI seriously, as a unique provider of unique services. If USAID's own future lies in strong partnerships with other powerful American organizations, the USAID-CEELI relationship can be a test case to determine whether these partnerships are possible. USAID has the experience to help CEELI become a better organization, as it has already shown through USAID's emphasis on institutional capacity building and results management. CEELI has the will and the access to resources that can make it a more effective partner by making some adjustments in the way it does USAID business and in the way it deals with the inevitable problems which will emerge in a diverse and complex relationship.

IV RECOMMENDATIONS

A Program Recommendations

In its country reports, the evaluation team presents many detailed recommendations related to aspects of CEELI's programs. This section aims to complement that series of recommendations. We encourage the reader to refer to the individual country reports for more specific program recommendations, which we continue to endorse in this final report.

The following recommendations focus on suggested changes, and do not capture the team's endorsement of continued funding for existing CEELI program components.

1. USAID and CEELI should discuss the possibility of CEELI being a more frequent provider of long-term institutional development projects related to legal reform, such as JTCs, based on its positive record.
2. USAID should consider expanding CEELI's work in commercial law programs, even though the SO divisions between "rule of law" and "economic growth" make this challenging for managers. The team believes that such distinctions are artificial for purposes of building free-market democracies, and that commercial law reform and rule of law reform are interdependent. CEELI's strength in developing indigenous CLE programs with its partners should be utilized to advance better understanding and implementation of recently revised commercial codes in CEE/NIS countries.
3. To address the importance of the reform of academic legal education to the long-term sustainability of rule of law reform, CEELI and USAID should undertake an analysis, including lessons learned from CEELI's and others' efforts to date, to promote positive change in this area. The objective of such an analysis would be to develop recommendations for continued and revised programs that would form the basis of a new, more strategic approach to achieving sustainable results in this critical sub-sector.
4. CEELI and USAID should explore additional avenues for developing cross-linking issues, based on the positive results of special initiatives such as the environmental public advocacy centers,

women and the law programs, etc. Doing so would capitalize on one of CEELI's relative strengths in the development community: accessing and mobilizing a wide range of expertise and interest from within the American legal profession, and marrying those human resources with advocates and reformers in developing countries to build both grassroots and centrally-based movements for change. The team makes a specific recommendation that USAID expand CEELI's program to develop Environmental Public Advocacy Centers in countries where USAID and CEELI identify appropriate demand.

5. CEELI and USAID should consider strengthening components of CEELI's regional program, and expanding CEELI's reach to conduct more regional or sub-regional workshops and other activities on issues common to CEE/NIS countries, upon submission by CEELI of an acceptable proposal. The team believes that an important ingredient of democratic development in this region is the exchange of information and experience among stakeholders from neighboring countries. An example of the kind of activity envisaged by this recommendation is the 1998 CEELI-organized conference on women and the law in countries of the former Yugoslavia that was highly praised by participants.

B Organization and Management Recommendations

The team has several specific recommendations and one, more general recommendation about the CEELI-USAID relationship.

Specific recommendations

1. CEELI should examine the utility and effectiveness of its current reporting and documentation system, with a view toward strengthening the focus on linkages between program activities and results. Also, CEELI should consider developing its own strategic plans either at the regional or country levels for key elements of its long term programs. In both of these recommendations, CEELI should seek feedback from USAID and other readers as to how the various documents might be made more readable, to the point, and useful.

2. CEELI and USAID may want to consider moving to a three year cooperative agreement, with annual workplans, and some other form of periodic reporting. The present system is expensive and by most reports, is not very effective.

3. CEELI and USAID may want to consider the continuing utility of the present omnibus cooperative agreement, perhaps by replacing it with more country by country agreements, especially for programs or clusters of programs large enough to warrant CEELI placing in country full time paid professional management.

4. As USAID gradually closes out of northern-tier CEE countries, the importance of having some kind of regional program in rule of law increases. Rule of law and judicial reform have lagged behind other sectors in the transition to free market democratic regimes, even in relatively successful countries such as Poland. A regional program can be an inexpensive but effective way to maintain institutional relationships and assets already created, as well as to mobilize the more advanced

expertise of an Estonia or a Czech Republic for providing collaborative assistance with CEELI to a Croatia or Georgia. The development of a small CEELI regional program management office in CEE might be an attractive element of an enhanced regional program. The office could be the location of the regional institutional development specialist, a commercial law training specialist, and the source of the regional environmental law newsletter. A workable model is the Freedom House regional office in Budapest, Hungary, also funded by USAID.

General Recommendation

The overall recommendation is that USAID and CEELI began a process of constructive dialogue, using this evaluation report as a basic document, including all of the comments and dissenting views. The purpose of the dialogue would be to determine what changes both sides must make if the relationship is to go forward and, perhaps, be stronger in the future. The dialogue would have several components:

1. CEELI should be prepared to demonstrate that both the evaluation process and the report has identified areas where CEELI is willing to recognize that it can do a better job, such as in overhauling the reporting system. CEELI might consider preparing its own vision and organizational development document, sharing it with USAID and others in the USG.
2. USAID needs to recognize what CEELI has accomplished, and be clear and transparent about what it considers must be done to overcome the problems of the past, and it must find some sort of process by which the actual achievements of CEELI's rule of law work can be recognized by USAID and reflected in the quality of professional discourse between it and CEELI.
3. CEELI must develop a reasonable level of appreciation for the constraints and pressures which USAID faces in meeting its Congressionally-mandated obligations. While its loyalty to its client base in CEE/NIS is admirable, it must recognize that USAID is also a client.

USAID senior management has recognized the difficulties of integrating the concepts of partnership and cooperation with independent organizations with the Agency's need to use competition, and to be accountable to the US Congress for results. The problem of developing democratic and rule of law societies in CEE/NIS and elsewhere in the developing world presents challenges to USAID and its partners which are relatively new in the context of the overall history of development experience. It may be that the approaches to providing effective assistance in this area will have to be different than the more tested development models in areas such as family planning or rural water supply. CEELI represents a different approach which needs to be analyzed, understood, and properly managed as part of the larger array of programs supported by USAID in the democracy sector.

ANNEX A

SCOPE OF WORK

1 1 BACKGROUND

ABA/CEELI has had two separate awards since 1992, one for Central and Eastern Europe and the other for the New Independent States, from USAID's Office of Democracy, Governance and Social Reform in the ENI Bureau. The ABA/CEELI programs are part of a larger effort that supports the ENI region's political transformation from one-party, centralized communist regimes to pluralistic democracies. As a whole, Democracy and Governance projects address the following areas: political and social process, rule of law, independent media, democratic governance and public administration, and the development of civil society.

The rule of law efforts focus on building legal infrastructure and helping create basic respect and legitimacy for the law. The emphasis is on supporting core legal institutions, helping ensure that the basic legal framework for a market economy is operative, and supporting constitutional government and human rights. In the NIS, ABA/CEELI has been part of a larger rule of law (ROL) effort that also includes the ARD/Checchi Rule of Law Consortium, Chemonics' American Law Consortium, Freedom House, and several parliamentary development projects. The ROL program, like other USAID programs, is supposed to directly support the Agency's strategic objectives, taking into account the work of other donors. The program does not limit itself to activities at the national level in some of its countries, but includes activities in various sub-national centers.

ABA/CEELI's work has focused primarily in four areas: judicial reform, legal profession reform (which includes developing continuing legal education [CLE] programs), legal education reform, and legislative drafting assistance.

In CEE, ABA/CEELI has been the only USAID assistance provider focusing on rule of law reform in broad terms.¹ In some CEE countries, at the request of the USAID Missions, CEELI's work emphasizes commercial law reform and training. This is not the case in any of the site visit countries selected, but should be examined as part of the overall cooperation between USAID and ABA/CEELI in establishing objectives for each country.

USAID funds other activities related to legal reform and relevant to the work of ABA/CEELI. USAID makes funds available to the Department of Justice under inter-agency agreements for work in reforming the criminal legal systems of various countries in the region. Target countries have been Lithuania, Poland, Romania, Russia, Ukraine and Georgia. DOJ itself grants funds to ABA/CEELI in order to carry out some of this work, however, activities implemented through the DOJ program are not to be evaluated under this scope of work. As part of its efforts to restructure the regulatory and commercial framework in the region USAID also finances work on drafting and implementing specific commercial laws, such as bankruptcy, collateral, banking, and securities laws. This work increasingly involves training the same constituencies (law professors, judges, practicing lawyers) targeted by ABA/CEELI. Sometimes, this work is done by ABA/CEELI and thus will be evaluated under this scope of work. In other countries, this work is done by other contractors, and needs to be considered in terms of coordination with all U.S. government assistance, and in terms of the cost of placing an advisor in-country.

Page 2 of 11

¹ Several contractors under USAID's Office of Privatization and Economic Reform (ENI/PER) have worked on specific commercial law activities.

1 2 TITLE

Activity Title Evaluation of the Rule of Law Program in Central and Eastern Europe and the New Independent States The American Bar Association/Central and East European Law Initiative (ABA/CEELI)

1 3 OBJECTIVE

The goal of the evaluation is to assess the effectiveness of the American Bar Association assistance activities funded by USAID in Central and Eastern Europe (CEE) and the New Independent States (NIS). The work of the American Bar Association/Central and East European Law Initiative (ABA/CEELI) will be reviewed against the objectives of the original grant, of subsequent grant amendments and of country workplans. Specific country programs will be the subjects of site visits that will allow for more in-depth evaluation of the extent to which the grant's objectives are being accomplished in those countries. The evaluation will provide the basis for USAID review of ABA/CEELI proposals for future work and for adjustments to country workplans.

1 4 STATEMENT OF WORK

The contractor will examine the historical development of ABA/CEELI in terms of its funding, its mandate from USAID, and its performance in the field. ABA/CEELI's programs have had to evolve with the changing political environments in the region, as well as with the creation, refinement and alteration of USAID's country strategies. The historical development can be traced through the background documents to be provided, but is summarized below.

1 ABA/CEELI work in CEE

ABA/CEELI first received a grant from USAID in March 1992 for work in CEE for a one-year period. Since that time, ABA/CEELI received grant awards on an approximately yearly basis until mid-1996, when the award was changed to a Cooperative Agreement (CA) in order to allow for more USAID input and coordination. The current CA for CEE countries expires on July 31, 1998.

During this period, ABA/CEELI's assistance has expanded into new areas that were not part of the original award, such as Bosnia, Croatia, and most recently, the Republika Srpska. Assistance has also been successfully graduated in the Czech Republic, Estonia, and Hungary, which were part of the original grant in 1992.

2 ABA/CEELI work in the NIS

ABA/CEELI was first awarded a grant for work in the NIS in May 1992. This award has also been renewed on a yearly basis, and was turned into a Cooperative Agreement in 1995. In 1996, USAID/Moscow awarded a Russia-specific grant to ABA/CEELI, thus, Russia was removed from the NIS regional Cooperative Agreement.

Also in 1996, several new countries were added to the NIS award: Georgia, Armenia, and Tajikistan. The current CA for the NIS countries expires on Oct 31, 1998.

D Site Visits for Evaluation Team

The following countries have been chosen for on-site work

1 *Poland* Work has focused on helping local organizations develop indigenous CLE programs, judicial reform (association building and training), and assisting commercial law reform

2 *Slovakia* Work has focused on judicial reform and training, clinical legal education, commercial law reform, and the street law program

3 *Macedonia* Work has focused on court administration, development of clinical legal education, and judicial reform

4 *Bosnia* legal skills training, development of judges' associations, training for legislative drafters for Cantonal governments and developing lawyers' associations

5 *Russia* Work has focused on developing indigenous CLE programs on advocacy and commercial law, development of practice based legal education programs, and gender issues

6 *Kyrgyzstan and Kazakstan*

Kyrgyzstan Work has focused on development of a legal research facility (Library Center for Legal Information), professional associations for attorneys, continuing legal education, judicial reform, and legislative assistance

Kazakstan Legal profession reform including establishing an ethics committee, legal resource center, judicial reform and legislative reform

7 *Ukraine* Work has focused on development of bar associations and an association of law students, continuing legal education for private lawyers, judicial reform, legal education reform and Environmental Public Advocacy Centers (EPACs)

8 *Georgia* Work has focused on professional lawyers association, judicial associations and judicial training, legal education and training, and assistance in drafting and legislative work,

E Purpose of the Evaluation, Issues to be Addressed

The purposes of this evaluation are to determine 1) whether ABA/CEELI has reached the objectives established by it and USAID in the grant documents and workplans that ABA/CEELI and USAID have developed for each of the years and in each country for which CEELI has received USAID funding, 2) whether the objectives established by ABA/CEELI and USAID, whether or not they were reached, were appropriate objectives, considering USAID's overall country strategies, the political realities of each country, and the level of funding allocated to each activity, 3) where such objectives were met, what made the program successful, 4) where objectives were not met, what factors contributed to such lack of success, whether exogenous or endogenous to the program. Examples of exogenous factors are political changes in the country, level of funding for rule of law activities, changing USAID or embassy priorities, etc. The evaluation should also contain recommendations for any adjustments to ABA/CEELI's program that seem warranted based on the findings above

Another issue to be addressed is how the fact that ABA/CEELI is a public service organization affects its efforts in the region. The contractor will develop a methodology to compare ABA/CEELI's cost for placing a liaison to the cost of placing a resident advisor through a contractor. In order to accomplish this, the evaluator will be given copies of current indefinite quantity contracts held by firms under the Global Bureau's rule of law program. These contracts list acceptable salaries for attorneys with various levels of experience, as well as overhead and other costs that would be compared to the liaison's allowances and other associated costs.

Within these overall purposes, there are several specific issues in Attachment 1, which the Contractor will address in the course of the evaluation.

F Team Composition

There will be two teams, each consisting of three people, two Americans and one European. One team will cover the Central and East European countries and will conduct work in the sample field sites of Macedonia, Poland, Bosnia and Slovakia. The other team will cover the New Independent States and will conduct work in the sample sites of Russia, Kazakhstan and Kyrgyzstan, Ukraine, and Georgia. The teams may consist of the same people if that is a more feasible arrangement.

Each evaluation team will possess the following required characteristics:

(1) **Team leader** - will have a professional background in international development work, with experience conducting evaluations and designing and implementing projects, preferably including USAID-funded grants and cooperative agreements. Experience with democracy and rule of law projects is desirable.

(2) **Second team member** - will be an attorney with a broad perspective on international legal reform issues, preferably with a background in continuing legal education. The attorney will have a minimum of 5 years of legal experience, including experience working in the CEE and/or NIS regions.

(3) **Third team member** - will be a European lawyer with strong English language skills and a background in one of the four areas that ABA/CEELI focuses on (i.e. judicial reform, legal profession reform, legal education reform or legislative drafting assistance). The attorney will have a minimum of 5 years of legal experience, including experience working in the CEE and/or NIS regions, and familiarity with Council of Europe and EU assistance programs. A lawyer from one of the Eastern European countries in transition from communism would be preferable to a Western European lawyer.

All team members should possess superior written and verbal communication skills. Preference will be given to a team with relevant regional and developmental experience.

Office of Procurement will provide the contractor a copy of Appendix 2 of CIB 94-2. This coverage will address, among other things, instances where a firm which has evaluated USAID contractors/projects under contract with USAID seeks to do USAID consulting work (sometimes in competition with the firms evaluated). The Contractor will agree to the terms of the conflict of interest coverage included in the delivery order. The contractor will further agree not to propose individuals who have worked under USAID funded rule of law projects in the ENI region, in order to avoid conflict of interest concerns. The Contractor will certify that there is no conflict of interest with respect to the performance of this evaluation on the part of either the Contractor or the individual team members for this evaluation.

The Contractor will guarantee that substitutions will not be made for individuals selected as team members without the approval of ENI/DGSR/RLG. If substitutions have to be made and if the contractor cannot find substitutes acceptable to ENI/DGSR/RLG, the evaluation will be cancelled or postponed at ENI/DGSR/RLG's option. Contractor will also guarantee that the approved team members will be available for all aspects of the time schedule.

G Methodology

Prior to departure

(1) Contractor shall review background documents, including

- o project authorizations
- o grant agreements and amendments, 1992 - 1997
- o work plans
- o monthly reports/trip reports
- o quarterly and semi-annual reports
- o audit reports (GAO/IG)
- o prior evaluations
- o other referential or historic documents provided by ENI/DG/RLG or ABA/CEELI

Note since USAID/Moscow has negotiated Russia-specific agreements with ABA/CEELI, these shall be reviewed also

(2) Contractor shall conduct interviews with USAID and ABA/CEELI staff in Washington, DC. Telephone conversations will be held with USAID's Democracy Office directors and ROL project specialists in the chosen evaluation field sites prior to the site visit. (Attachment 2 includes a list of pertinent people with whom, at a minimum, the Contractor will meet.) The contractor should also interview by telephone USAID's democracy staff and ABA liaisons in countries that are included in the ABA/CEELI program, but not selected as field sites.

Approximately ten workdays will be needed in Washington, D C to review background materials, conduct telephone interviews and meet with ENI/DGSR/RLG and ABA/CEELI staff and other representatives. The Contractor should plan to observe an ABA/CEELI briefing, for which up to four workdays can be budgeted.

(3) ENI/DGSR/RLG will obtain country clearances for the team.

Field Visits

(1) During field work, the Contractor shall conduct an extensive review of the work carried out by ABA/CEELI up to the time of this evaluation in order to assess progress toward the objectives established for their activities and effectiveness of overall program strategy. This review will include meetings with the current ABA/CEELI liaisons and other ABA/CEELI representatives who may be in country, U S Embassy and USAID representatives, host country counterparts, other donor representatives and a representative sample of host country lawyers, judges, and other legal professionals. The Contractor should have at least two meetings with ABA/CEELI in each country in order to double-check information gathered from non-ABA/CEELI sources.

(2) Contractor shall brief USAID Representatives in the field upon arrival and shall present a summary of preliminary findings to the USAID representative prior to departure.

(3) Contractor shall attend some portion of the ABA/CEELI annual liaisons' conference in Bucharest, Romania in July of 1998

Following field visits

- (1) Contractor shall orally brief and present preliminary findings to ENI/DGSR/RLG staff upon its return from the field
- (2) Contractor shall orally brief and present preliminary findings to ABA/CEELI Washington staff upon its return from the field
- (3) Contractor shall orally brief selected USAID staff, in Washington, upon submission of the final report

Approach to Evaluating NGO's

Much of ABA/CEELI's work involves creating or strengthening indigenous NGO's, such as bar associations, judicial training organizations and legal clinics. In evaluating the effectiveness of ABA/CEELI's work with indigenous NGO's, in addition to considering the substantive quality of the NGOs' program, the contractor will look at institutional development and sustainability criteria such as the presence of democratic internal governance (like a board of directors and charter), ability to employ professional staff, ability to recruit members/volunteers from a large geographic region, transparent financial management practices, presence of fundraising strategy, willingness of clients to partially pay for some of the NGO's services, or for membership

Work that does not involve NGO's, such as work with government agencies and legislative drafting, should also be reviewed with respect to sustainability, as evidenced by such indicators as regular annual appropriations for key institutions and transparent methods for recruiting and retaining key personnel

H Schedule

The site visits shall begin no earlier than May 1, 1998. Ten workdays will be required in Washington prior to departure. This time will be devoted to deciding whom to interview and which sites and institutions to visit in Macedonia, Poland, Slovakia, Bosnia, Russia, Kazakstan, Kyrgyzstan, Ukraine and Georgia, to scheduling appointments for field meetings, and to collecting and reviewing pertinent documents. Travel outside of the capitals of each country may be necessary. The CEE and NIS field visits will require 4 six-day workweeks each. Following the field work, approximately one week will be needed for debriefing and draft report preparation. USAID and ABA/CEELI will then have up to two weeks to review and comment on the draft final report. Finally, up to one week will be required after receipt of USAID and ABA/CEELI feedback for drafting the final report, and one day will be required for the final briefing.

1.5 ACCOUNTING AND APPROPRIATION DATA

Delivery Order Ceiling Price \$280,968
Appropriation and Accounting Data

Organization 10211
Request ID 0000760
Resource Code 210342
Activity Performance Evaluating
Account AI97/98WAI798 - \$129,000
NI98/99WNI898 - \$128,500

Amount Obligated \$257,500

Total Obligated Amount \$257,500

1 6 Reports

The Contractor shall produce three reports a Draft I report summarizing findings from the NIS field work, a Draft II report that is the draft of the final report and a final report Draft II and the final report will include

(1) **Executive Summary** A summary, not to exceed two single-spaced pages, should list, in order of priority, the major findings, conclusions, and lessons learned from the field work or evaluation

(2) **Body of the Report (not to exceed 25 pages)** Generally, the analysis should be structured in the following way findings, conclusions, recommendations Specifically, the report should

- (a) describe the impact and/or identify successful activities and accomplishments achieved by the implementing organization,
- (b) alert the reader to possible problem areas,
- (c) identify, in order of importance and urgency, activities which should be modified or discontinued, with justifications that support these recommendations,
- (d) assess communication and areas for improvement between USAID/Washington, ABA and the field,
- (e) comprehensively address issues listed in Attachment 1,

(3) Appendices

Five (5) copies of the draft reports and ten (10) copies of the final report (nine bound and one loose leaf) shall be submitted by the Contractor to AID/Washington for distribution The draft and final reports will be presented in hard copy and on a diskette in the format "WordPerfect 5 2 for Windows " The reports should be no longer than 25 pages Additional material should be submitted as Annexes, as appropriate (e g Scope of Work, bibliography of documents analyzed, list of agencies and persons interviewed, list of sites visited, and discussions of technical details that can only be summarized in the main report)

(4) Timing

Immediately before departure from a field site, draft summary findings and conclusions will be verbally presented to USAID/Mission staff at a preliminary briefing Preliminary findings will be written for use in these briefings, as described above Draft reports shall be submitted within three weeks following the team's returns to the U S for USAID and ABA/CEELI review and comment Within one week of receipt of comments on the Draft II report, the evaluation team will prepare and submit a final report that responds to the comments of the USAID Missions in the evaluation field sites, USAID/Washington and the ABA/CEELI

(5) Deliverables

Workplan At least one week prior to departure, the Contractor shall submit a draft work plan to ENI/DGSR/RLG for concurrence

Country-specific findings For each country where field work takes place, the contractor will prepare a 2-3 page written report of findings on that country's ABA program for use in debriefing AID personnel in that country Copies of this report will be faxed to ENI/DGSR/RLG at least one day before the debriefings, if possible

1 7 TECHNICAL DIRECTIONS

Technical Directions during the performance of this delivery order shall be provided by the Technical Officer as stated in Block 5 of the cover page pursuant to Section F 9 of the contract

1 8 TERM OF PERFORMANCE

- a Work shall commence on the date noted in Block 7 of the cover page. The estimated completion date is reflected in Block 8 of the cover page.
 - b Subject to the ceiling price of this delivery order and the prior written approval of the Technical Officer (see Block No 5 on the Cover Page), the contractor may extend the estimated completion date, provided that the extension does not cause the elapsed time for completion of the work, including the furnishing of all deliverables, to extend beyond 30 calendar days from the original estimated completion date. Prior to the original estimated completion date, the contractor shall provide a copy of the Technical Officer's written approval for any extension of the term of this delivery order to the Contracting Officer, in addition, the contractor shall attach a copy of the Technical Officer's approval to the final voucher submitted for payment.
 - c It is the contractor's responsibility to ensure that the Technical Officer-approved adjustments to the original estimated completion date do not result in costs incurred that exceed the ceiling price of this delivery order. Under no circumstances shall such adjustments authorize the contractor to be paid any sum in excess of the delivery order.
 - d Adjustments that will cause the elapsed time for completion of the work to exceed the original estimated completion date by more than 30 calendar days must be approved in advance by the Contracting Officer.
-

**Evaluation Questions
Rule of Law**

Results

What have been the overall results of the ABA/CEELI work in Macedonia, Bosnia, Poland, Slovakia, Russia, Kazakhstan, Kyrgyzstan, Ukraine and Georgia? Specifically

- 1 Is ABA/CEELI achieving the objectives that it and USAID developed in most of the countries where USAID supports its program?
- 2 How effective has ABA/CEELI been in providing assistance in creating and sustaining new indigenous institutions? What factors, either exogenous or endogenous, contributed to the success or failure in sustaining the institutions?

Below are the areas in which ABA/CEELI has worked

Judicial Reform

One of CEELI's goals in many countries is the development of sustainable judicial associations and training programs. How effective has this effort been? How have the activities varied among the evaluated countries? Is the status of the institution (governmental versus non-governmental) a factor? What techniques have been the most effective and why? Is this an area in which more emphasis should be placed on regional activities, or is a country specific approach required? Has ABA/CEELI coordinated with judicial training activities undertaken by other implementors and donors? What factors contribute most to sustainability?

NOTE In the NIS, other rule of law assistance implementors besides ABA/CEELI have provided judicial training and education

CLE Programs and Bar Development

What has been the overall impact of this component and what is the likelihood of sustainability of the various programs or organizations? In which of the countries evaluated are bar associations or CLE programs the most developed institutionally and what are the primary reasons for their success? What has been the impact of bar development or the lack thereof on sustainable attorney and judicial training and/or CLE?

Law Schools (Ukraine, Slovakia, and Russia)

ABA/CEELI's work in this area relates largely to developing clinical programs in the broadest sense, meaning the use of practice-based teaching methodologies, the development

of externship programs, as well as what are typically considered to be full, in-house clinics. What has been the impact so far? What have been the achievements in terms of curriculum reform and teaching methodologies? Does this component have the potential to improve legal education on a wider basis than within the individual law schools that ABA/CEELI assists? Would this be a program for replication in other countries?

Commercial Law Reform

ABA/CEELI has provided assistance with a number of commercial law reform efforts in CEE, in particular in areas of bankruptcy, collateral law, contracts law, and development of commercial law institutions as sustainable training providers. However, commercial law has not been the focus in the countries chosen for site visits. To the extent possible, the Contractor should review the following questions for those programs where commercial law is the primary focus (i.e. Bulgaria). What was the nature of the assistance (i.e. legislative drafting, training, etc.)? What kind of training has been provided on the commercial laws targeted? Have any of the laws that ABA/CEELI assisted with been legislated into effect? Have there been any court cases based on the new laws? Does the Commercial Law Center in Poland seem sustainable?

Court Administration

In 1996, court administration efforts were begun in Macedonia. What has been the impact so far? Are there clear indicators for success in this area in ABA/CEELI's workplan, and has progress been made? Are any changes in provision of assistance recommended? Are successes replicable in other countries? Note: Evaluators will conduct phone interviews to gain information on the program in Macedonia.

Regional Judicial Specialist and Regional Institution-building Advisor

In Spring 1996, ABA/CEELI posted a Regional Judicial Specialist in Slovakia to assist CEE countries in developing various types of professional legal associations and institutions. In the Fall of 1997, she was relocated to Kyiv. CEELI then posted a Regional Institution Building Advisor to the CEE in September 1997. What value-added have the regional advisors brought to the program? What lessons can ABA/CEELI build on when implementing its NIS work?

Legislative Assistance

ABA/CEELI has provided legislative assistance to a number of countries in CEE and the NIS. This work includes both assessments of draft laws, and assistance to parliamentary procedures and legislative drafting. In terms of assessments of draft laws, an earlier evaluation noted that these are very cost-effective. Is this still the case? How many laws have been passed in ENI that were the subjects of substantial revision or guidance from ABA/CEELI? Have any of these laws been the subject of enforcement actions (this is not ABA/CEELI's mandate but is relevant to evaluating the ultimate impact of the assistance)? What has been the utility of legislative drafting workshops? Have assessments and concept papers furthered the aims of opening debate on draft legislation and strengthening the

advocacy skills of NGO's? Is the current form of legislative drafting assistance provided by ABA/CEELI still useful and appropriate? If not, should some other form of assistance be provided?

Inputs

1 Training content Is appropriate information provided to counterparts in light of current developments and priorities in each country? Is it tailored for each audience? Is the right mix of host country information versus foreign information being provided?

2 In-Country Representation What have been the dynamics between in-country liaisons and short-term specialists? In what manner are short-term specialists oriented and utilized, in general? What do cooperating country interlocutors say about their receptivity to liaisons and specialists?

3 Vehicles for Training Is there any consensus or indication that certain types of vehicles are better received than others in the host country context? Are there any lessons to be learned on the appropriateness and effectiveness of seminars, mock trials, roundtables for discussion, newsletters, instructional videos, or one-on-one consultations? Are there any more general conclusions to be culled--perhaps only in specific areas of the ABA/CEELI project--on the advantages and disadvantages or cost-effectiveness of U S -based versus in-country training?

4 Equipment How is equipment being used when it represents part of a country program? Who has access to the equipment? Is the equipment advancing the project's objectives? What sorts of materials have been produced by the equipment?

5 Sub-grants How is sub-grant funding being used when it represents part of a country program? How does ABA/CEELI ensure that funds are used for designated purposes?

USAID Utilization of ABA/CEELI within the Country Strategy

1 What are the relative advantages and disadvantages of using public service organizations vs for-profit consultants? What role do liaisons play in developing ABA/CEELI's annual workplans? Does the USAID Mission staff include the ABA/CEELI liaisons in coordination and strategic objective team meetings? If not, why not?

2 What are the primary responsibilities of Washington-based ABA/CEELI staff, especially its Country Directors? What is their role in drafting annual workplans?

3 Are ABA/CEELI and USAID jointly developing goals that are appropriately relevant to USAID's strategic objectives in each country? Do the workplans developed by ABA/CEELI and USAID further the attainment of those objectives? Apart from the indicators developed

for USAID's strategic plans and R4's (Results Reviews and Resource Requests), has ABA/CEELI developed indicators to measure the impact of its programs? Does it gather data on strategy/R4 indicators or other indicators? Does ABA/CEELI conduct needs assessments prior to proposing new components for a country?

4 Does ABA/CEELI have adequate and appropriate local staff in each country? What is their role in planning and implementing activities?

5 What is the level of cooperation and coordination between ABA/CEELI and other USAID grantees and contractors in country? What factors contribute to the success or failure of such coordination?

Implementation Issues

1 Selection of Recipients What are the criteria that ABA/CEELI uses to select host country participants for training? Is an external review process used? What are the lessons learned?

2 Selection of Counterpart Organizations What are the key criteria for working with host country counterparts? Have counterparts been changed if found to no longer meet these criteria?

3 Donor coordination Is there room for a greater role of donor coordination in the program? Are in-country resources, such as U S experts (Fulbrights, Harvard Institute for International Development commercial law experts) or materials developed by other donors being employed by ABA/CEELI?

4 Replication strategies Has the ABA/CEELI program been able to replicate successful models when it has worked specifically to create them as part of a country program?

ATTACHMENT 2

Note we have asked the Missions to provide us with more names of people whom the evaluation teams should contact

CONTACTS

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USAID

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ANNEX B

DRAFT COUNTRY REPORTS

**Evaluation of the Rule of Law Program in Central and
Eastern Europe and the New Independent States: The
American Bar Association/Central and East European
Law Initiative (ABA/CEELI)**

for
**THE UNITED STATES AGENCY FOR INTERNATIONAL
DEVELOPMENT M/OP/ENI/DGSR**

AEF-I-00-96-90006-00, D O 13

January 1999

Submitted by
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ANNEX B

DRAFT COUNTRY REPORTS

Introduction

The Scope of Work for this evaluation required the team to prepare brief country reports as a basis for the oral de-briefing of USAID and local CEELI staff in each country visited. Because of the complexity of the program, and the need to explore as many issues as possible, the team chose to prepare more lengthy reports for the first three countries: Russia, Ukraine and Georgia. Both CEELI and the Russia and Ukraine missions provided informal comments on these country reports. For purposes of efficiency, these three country reports have been substantially edited for presentation in this annex. During the second phase of the field research, the team adhered more closely to the SOW requirements, preparing relatively short country reports for each USAID and CEELI office in Bosnia and Herzegovina, Macedonia, and Poland. Comments were received from CEELI in response to all three country reports, although no comments have been received from any of the three USAID missions. In its best judgment, the team has taken into account all comments in the process of editing all country reports. We emphasize that these reports are still marked "draft" and will remain as such.

The team did not produce country reports for two additional countries, Latvia and Lithuania, which were visited only briefly for purposes of obtaining information on judicial training centers.

The interested reader is encouraged to review these reports. Together they provide a more comprehensive picture of the richness and diversity of the CEELI program at the level of the individual country program, as well as a more detailed recording of specific accomplishments and problems, than could be captured in the summary final report.

**The American Bar Association/Central and
East European Law Initiative (ABA/CEELI)**

**Evaluation
Russia Country Report**

DRAFT

January 1999

Authors

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Robyn L. Goodkind
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Submitted to

United States Agency for International Development
ENI/DGSR

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	11
1 0 BACKGROUND	1
2 0 ABA/CEELI IN RUSSIA	3
3 0 AGREEMENTS AND STATED OBJECTIVES	4
4 0 RULE OF LAW CONTEXT	6
5 0 PROGRAM ELEMENTS	8

EXECUTIVE SUMMARY

The evaluation of the USAID funded ABA/CEELI Rule of Law program in Russia was conducted by an expert team from June 13 to June 20, 1998 based on an extensive Scope of Work prepared by USAID with input from ABA/CEELI. This report is part of a series of country evaluations which will be synthesized in a final program evaluation report submitted to USAID in January 1999.

The SOW directs the evaluation to address four main issues: whether 1) objectives were met, 2) objectives were appropriate, 3) there was observable impact, and 4) the impact was sustainable. In addition, the SOW requires the team to address the effectiveness of the program's institutional development efforts, and a number of organization and management questions regarding the strengths and weaknesses of the unique ABA/CEELI reliance on volunteers to provide technical assistance. The Country Report presents tentative findings, conclusions and recommendations for each program element. The final report, which covers all 22 countries where CEELI works, addresses organizational and management issues as well.

This Executive Summary will present an overview of impact, followed by main conclusions and recommendations for each program element.

Overview of Impact

The ABA/CEELI program in Russia has worked in nearly every region of the country, implementing activities in jury trial reform, advocacy skills, commercial law, bar association development, continuing legal education, law school reform, and gender and law. CEELI has effectively responded to the dynamic needs of Russia, as it has grown from a newly independent country fresh from Communism to a developing country in the formative stages of a free market democracy.

Results from CEELI's Russia program are positive and demonstrable, as illustrated in the summary of Program Elements below. Russians interviewed for this evaluation consistently testified as to the impact of CEELI's work. Of particular note in Russia are the following findings:

- CEELI contributed to the reintroduction of jury trials,
- Jury trial and advocacy skills taught by CEELI are still used and highly valued,
- CEELI is the only provider of much-needed current Commercial Law training,
- Continuing Legal Education training materials and methodologies are models for other countries,
- CEELI has successfully "Russified" much of its program,
- CEELI has successfully reached into the regions, even as far as Irkutsk,
- Strong partnerships with local associations, especially collegia of advocates, have helped advance CEELI impact,
- In a short period of time, CEELI has established an impressive gender and law program, and
- The energy, commitment, and quality of CEELI liaisons, country directors, and other specialists has been outstanding.

Program Elements

Judicial Reform *Conclusions*

- Objectives for the jury trial program and advocacy skills training were met and were appropriate to Russian conditions CEELI helped reintroduce jury trials, and they are still in use in 8 oblasts Russians highly value and still use the skills they acquired through CEELI's advocacy skills training program
- Impact was substantial and observable Judges and advocates participating in the CEELI program gained needed knowledge and skills, courtrooms were equipped, advocates feel more empowered, acquittals have increased, and public participation remains high Training materials, and handbooks produced under the program are still in use
- Sustainability is an open question, subject to macro level political and financial decisions at the national level Although considered inevitable, the jury trial system has not been replicated throughout Russia

Recommendation

- The jury trial system is favorably linked to larger rule of law and democratic participation objectives, and therefore should be assessed and monitored, Advocacy Skills training should be introduced in new CEELI programs, such as commercial law and gender, and should be considered for reintroduction as a stand-alone training course

Commercial Law *Conclusions*

- Objectives are being met, impact is apparent and impressive Commercial Law CLE programs have been implemented in the provinces and in Moscow Russians highly rate CEELI's seminars and lectures for their relevance and interest Through Commercial Law programs, bar associations are being strengthened and lawyers are obtaining much-needed knowledge and information that no other source provides
- Objectives are clearly appropriate in Russia's emerging market economy
- The program is moving toward sustainability with fees for training introduced successfully in several major cities

Recommendations

- The Commercial law program should be expanded to new regions
- Russification should continue with more effort to develop Russian trainers from the private commercial law sector

Bar Development and Continuing Legal Education *Conclusions*

- The objective of developing “more effective bar associations” has been met through the establishment of local and specialized associations. The early formulation of this objective, the “strengthening of indigenous professional legal organizations,” anticipated that the Federal Union of Advocates would be an appropriate partner. Russian conditions have not been conducive to the development of a self-regulating national bar association, and thus this effort was appropriately postponed.
- Objectives focusing on CLE and Commercial Law have been met, and impact has been broad and important. American training methodology is highly regarded. CLE programs are being regularly offered by Russian centers in several cities using CEELI trained trainers and materials developed by CEELI.
- The impact is sustainable and expanding, as more Russians are trained as trainers, and more local organizations take on the task of organizing CLE. In Commercial Law, fees are being charged for CLE programs in several cities.

Recommendation

- ABA/CEELI should continue its successful efforts to date to expand and “Russify” the CLE program and expand it to sectors other than commercial law.

Legal Education *Conclusions*

- Objectives have been achieved in the limited sense outlined in the CEELI workplans. CEELI has assisted in the introduction of clinics and new teaching modules for practice-based education. Accomplishments are still limited by restrictive curriculum requirements and the generally conservative regime of Russian legal education.
- Given these limitations, the broad objective of legal education reform remains appropriate and important. CEELI training programs for interactive and practice-based teaching as well as scholarly exchanges will help create arguments and advocates for reform.
- The impact of CEELI-inspired teaching modules is just about to be felt, and the clinics still have to be developed to be a full-fledged academic as well as practical experience.
- The sustainability of these new approaches will remain fragile until the constraints of the rigid educational system begin to be relaxed.

Recommendation

- A target-of-opportunity approach should be followed in supporting reform-minded faculty efforts to introduce and improve clinical experiences, to learn and use interactive teaching methods, and to introduce teaching modules for the current curriculum. To enhance reform,

the dialogue with academic leaders should continue, and exchanges of faculty and students should be increased

Legislative Assistance *Conclusions*

- The objective of providing assistance to legislative drafting was met
- The objective was appropriate in the early stages, but the demand for such assistance appears to have narrowed
- The impact of the legislative assistance program could not be independently verified
Instruction in legislative drafting has had impact at the district level in some instances

Recommendation

- Legislative drafting assistance should be part of a working relationship between ABA/CEELI and the host country partner, especially at the district level, and carried out in conjunction with drafting workshops and materials preparation in Russian

Gender and Law *Conclusions*

- The objectives of this new program's awareness and mobilization stage have been partially met
- The objectives are appropriate in general
- The impact has been intense but limited
- Sustainability is an open question until the program is able to develop more experience and openness among legal professionals (judges, procurators, advocates) regarding gender bias and gender motivated criminal behavior

Recommendation

- Shift program focus to legal professionals with objective of increasing number of gender crime cases in courts of law which follow appropriate procedures

10 BACKGROUND

This evaluation of the American Bar Association/Central and East European Law Initiative's (ABA/CEELI) Rule of Law program in Russia is part of a larger program evaluation of all CEELI programs in Central and Eastern Europe and the Newly Independent States (NIS). The evaluation was commissioned by the United States Agency for International Development's Office of Democracy, Governance and Social Reform in the Bureau for Europe and the Newly Independent States (ENI). An extensive Scope of Work (SOW) was prepared by USAID with input from ABA/CEELI. The SOW sets out detailed questions to be answered, and issues to be investigated. The evaluation was conducted by a Management Systems International (MSI) team made up of a senior development evaluation specialist, an attorney with rule of law development experience, and an European-educated law professor/legal expert with experience in U.S. and European law and legal education systems.

The evaluation began in Washington, D.C. on June 3, 1998 with extensive briefings from ABA/CEELI, USAID, meetings with other informed professionals, and an assembly and review of program planning and reporting documents submitted by ABA/CEELI and USAID. Field visits to nine countries began with Russia on June 15, visits to Ukraine, Georgia, Bosnia and Herzegovina, Macedonia, Poland, Latvia, and Lithuania followed. Before departing, the evaluation team provided the USAID mission with an interim oral report. Upon completion of all field visits in September-October, 1998, the team will submit a summary evaluation report.

USAID's purpose in commissioning this comprehensive evaluation is to determine: 1) the extent to which ABA/CEELI has achieved the USAID grant objectives, as well as Strategic Objectives and Intermediate Results, 2) whether those objectives were appropriate, 3) the sustainability of achievements, 4) to advance the reasons for success or failure, and 5) to receive the evaluation team's recommendations on how best to shape the relationship between USAID and CEELI in the future. An issue USAID emphasizes in the SOW is the extent to which ABA/CEELI activities contribute to the establishment, strengthening and sustainability of various types of legal institutions. The SOW instructs the evaluation team to assess certain "issues" related to CEELI's public service orientation, e.g., reliance on "pro bono" or volunteers for both short and long-term legal advisory roles, versus for-profit contractors, including a cost comparison of a CEELI volunteer vs. a for-profit consultant. Also to be addressed are issues of ABA/CEELI internal management, coordination with other vendors and donors and relationships with USAID. These issues are explored in detail in the final report, submitted in January 1999.

The methodology used by the team is standard for USAID evaluations, including document review, interviews with field-based implementors, USAID, US Embassy staff, and host country participants and beneficiaries of the assistance program. Field logistical support and interview appointments and schedules were prepared by CEELI field offices. USAID field mission input to the interview schedule was sought by the evaluation team to ensure that the diverse views and experiences with the CEELI program would be ascertained.

During the five days of field interviews in Russia, the team interviewed 5 USAID, 1 USIS, and 2 US Embassy officials. A second intensive interview with Patrick Murphy, the USAID PSC project officer

was held. At CEELI Moscow, formal interviews were conducted with two professional staff, five long-term liaison and legal advisory staff, and three local professional and support staff. In addition, CEELI Russia Country Director Michael Maya and Washington representative Mark Dietrich and other staff traveled with team members to provincial cities, as well as informally answered questions throughout the time spent in Russia. Per the agreement between CEELI and USAID, Messrs. Maya and/or Dietrich observed most of the interviews with CEELI personnel, but did not participate in meetings with Russian partners and beneficiaries.

On the Russian side, the team interviewed 22 Russian advocates, educators and one judge while in Moscow. Midweek, the team split up to visit Rostov-on-Don, Saratov and St. Petersburg, where the team members interviewed additional Russians who were CEELI partners or had participated in CEELI programs. Through team members' personal connections, additional information and opinions were solicited from individuals in the legal profession who were not directly connected with CEELI programs. Altogether the team interviewed 40 Russian jurists.

In Moscow and during the field visits, the team was able to sit in on a Commercial Law Continuing Legal Education lecture (CLE), visit a CEELI initiated mock courtroom, a CEELI grant supported Legal Education Reform Center, a Collegium office, and other CEELI supported activities.

The team worked with CEELI Moscow to generate data on CEELI programs in formats not normally used by CEELI for activity reporting.

The team considered using systematic data collection techniques, including mailed questionnaires, telephone interviews, and structured focus groups in provincial cities. In the end, local reports of low response rates, distrust of telephones, as well as insufficient budget limited the teams' data collection choices to rapid appraisal techniques commonly used in USAID evaluations.

2.0 ABA/CEELI IN RUSSIA

CEELI's first liaison to Russia arrived in May 1992 and remained for 25 months. To date, the average length of stay for Russia liaisons is 16 months. Legal specialist assignments have been of much shorter duration for a longer period of CEELI history in Russia. From 1992 to mid 1996, the average legal specialist stay in Russia was 3.5 months. This changed in 1996, when the average stay of a legal specialist increased to 11 months, if three specialists with less than two month assignments are dropped out.

Approximately \$4.5 million has been authorized over a 3-year period for the Russia CEELI program. To manage this effort, USAID and CEELI agreed to two significant management changes: first, beginning with the current 1996 Cooperative Agreement, USAID/Russia's cooperative agreement is directly with ABA/CEELI, and not part of the omnibus cooperative agreement between the USAID/ENI bureau and ABA/CEELI in Washington. This change gives the USAID mission more ownership of the cooperative agreement, and a greater and more direct stake in the outcomes. Second, CEELI agreed to move its paid Country Director position from Washington to Moscow in the fall of 1997. This change enables the local CEELI office to have a direct management relationship with its primary client, the USAID/Russia mission.

Another distinct feature of the CEELI office in Moscow is a resident US professional trainer through a sub-contract arrangement with the Institute for International Education (IIE). This Russian speaking professional has helped CEELI develop and implement systematic CLE programs.

CEELI/Moscow retains its reliance on voluntary U.S. liaison and legal advisors for the provision of technical legal dialogue, and training services, with three volunteer positions in Moscow, including one for each of the major program areas in legal education, commercial law, and gender law. In addition, reflecting the size of the country, two liaisons are posted in the Russian provincial centers of Irkutsk and Rostov-on-Don.

An important feature of the CEELI office in Russia is its reliance on an experienced Russian professional and administrative staff, including a senior Russian Resident Attorney, primarily assigned to the DOJ program. This staff provides much of the day to day financial and program management experience and networking continuity for the Russian CEELI program. Its prominence in program management echoes the more general theme of "Russification" stressed by USAID and found in the implementation of many of CEELI's legal training programs.

By combining the elements of paid and volunteer personnel with increasing reliance on experienced Russian staff, the CEELI office in Moscow represents a potential model for other large CEELI programs. Whether this new management structure is relevant to other CEELI programs, or is unique to Russia because of its size, complexity and the direct USAID-CEELI agreement, is an open question for this evaluation.

3 0 AGREEMENTS AND STATED OBJECTIVES

3 1 Overview of NIS and Russia Contracting Mechanisms

ABA/CEELI began its rule of law work in the NIS in 1992 with a grant from the USAID NIS Task Force for a sum of \$999,000 for work in 10 countries, two amendments obligated \$2.4 million more, and to a large extent targeted additional work in Russia. In 1994, a second grant was awarded to CEELI by the USAID ENI Bureau for \$4.15 million, supplemented by approximately \$8 million through six modifications. This grant, which was changed to a cooperative agreement in 1996, was structured as an "omnibus" funding mechanism with seven NIS USAID missions contributing to the budget. It is currently centrally managed by USAID/ENI and is scheduled to expire in October 1998.

Notably, USAID/Moscow awarded its own cooperative agreement to ABA/CEELI in July 1996, this agreement along with two modifications allocates a total sum of \$4.5 million through the period ending May 1999. Since 1996, this cooperative agreement has been the exclusive source of funds for ABA/CEELI's Russia program, removing Russia from the ongoing NIS omnibus cooperative agreement and transferring the management of CEELI's Russia program to USAID/Moscow's Office of Democratic Initiatives and Human Resources.

3 2 Stated Objectives

Objectives for CEELI's Russia program can best be viewed in three distinct phases that correspond to the contracting mechanisms summarized above. Table 3.1 provides a combined illustration of the history of contracting mechanisms, budget allocations, and stated objectives for each phase of Russia's program. Contracting and budget information for that part of the 1994 grant that does not apply to Russia is not shown in the table.

The 1996-1999 cooperative agreement from USAID/Moscow directly links CEELI's program description to the mission's Strategic Objective 2.2, Legal Systems that better support democratic processes and market reform. Intermediate Results under this Strategic Objective form the stated objectives for CEELI's rule of law program in Russia from July 1996 to April 1998, along with workplans for that period. A modification in April 1998 changed the objectives to some extent, formalizing the mission's shift from judicial reform activities to commercial law activities.

RUSSIA CONTRACTING MECHANISMS, BUDGET ALLOCATIONS, AND STATED OBJECTIVES

Date	Contract Period/Mechanism	Sum Obligated	Stated Objectives for Russia
	PHASE ONE		
5/93	May 1992 - July 1994, Grant from NIS Task Force for 10 Countries July 93 Sept 93	\$999,000 \$1 3 million \$777,306	1 Constitutional Reform assist in drafting new constitution 2 Judicial Reform/Criminal Law & Procedure Reform assist in the reintroduction of jury trials 3 Local Govt Law Reform in context of commercial law development, revise regional and municipal charters for governmental authority and develop ethical codes 4 Legal Profession Reform 5 Legislative Assistance
	PHASE TWO		
8/94	Aug 94 - July 96, Grant/Cooperative Agreement from USAID/ENI Omnibus funding from 7 NIS USAID missions Sept 95	\$2 5 million (all countries) \$500,000 (Russia)	1 Judicial Reform/Criminal Law & Procedure Reform assist in the reintroduction of jury trials 2 Commercial/Bankruptcy Law Reform 3 Legal Profession Reform 4 Legal Education Reform 5 Legislative Assistance
	PHASE THREE		
7/96	July 96 - May 99 Cooperative Agreement from USAID/Moscow	\$16 65 million to date	1 Legislative Assistance more transparent, open and informed process of legislation 2 Judicial Reform better judicial understanding of law and judicial ethics (phased out in 4/98) 3 Legal Education Reform strengthened law schools 4 More effective bar associations 5 Legal Profession Reform improved continuing legal education 6 Advocacy Support for Women (phased in 8/97) 7 Commercial Law Reform (phased in 4/98) 8 Intellectual Property Law Reform (phased in 4/98)

89

4.0 RULE OF LAW CONTEXT

Russian society and legal framework are in a state of profound transformation. While the process of creating institutions and substantive prescriptions for a free, democratic and market-oriented system is approaching completion, the task of acculturating leaders as well as rank and file to the rights and responsibilities undergirding such an order has only just begun. Corruption is seen as rife, and organized crime is often perceived as the real engine of economic reform. At this stage of development, it appears paramount that the new institutions of the free Russia be respected, utilized, and strengthened, and that its laws and regulations be implemented and given time to become the law in action in this country of transition.

The establishment and strengthening of the rule of law in Russia becomes a critical goal in ensuring the survival of the new political, social and economic order. Replacing the de facto governing principle of unity of power under the preeminence of the Communist Party in the former Soviet Union, the Federation of Russia, after declaring independence under President Boris Yeltsin in 1990, gave itself, in 1992, a Constitution which decreed a mixed parliamentary-presidential system of government, an independent judiciary, and an array of Western-style guarantees of civil and political rights. Its legislature, the Federal Assembly, is bicameral, consisting of a higher (the Federation Council) and a lower house (the State Duma). The President wields the full panoply of executive power, and has the authority, subject to the approval of both houses of parliament, to appoint and dismiss the Prime Minister and members of his cabinet. In addition, he is given the veto over legislative action (which may, however, be overridden) and a power to issue decrees, i.e. quasi-legislative enactments, himself. The constitutionality of all governmental action is reviewed by a Constitutional Court.

Russia is a federal state, albeit a tenuous one, given the pressures of secessionist movements in Chechnya, Southern Ossetia, Tatarstan, etc. Legislative power is largely concentrated at the federal level. The constituent entities of the federation, its so-called "subjects,"¹ retain mostly concurrent legislative powers which they are wary of exercising; their exclusive legislative powers are limited to areas of family law and other fields the federal constitution has not assigned to the federal authorities. Effective state and local governmental structures built on the principle of separation of powers are only slowly emerging; holdovers from pre-democratic times are still perceived as wielding dominant power, in many cases, at the sub-federal level.

The judiciary is now mandated to be the guardian of the Constitution and principal guarantor of the rule of law. Full assumption of this new role is hampered by the fact that the Yeltsin Revolution did not effectuate a political change in the judiciary: the tenure of judges appointed during the Communist era continued. Also, the bar did not lose the members who started their professional life during pre-democratic times. Thus, full implementation of a rule of law mandate requires a measure of change in the members of the bench and bar which has both a personal and a generational

¹ There are 89 'subjects' of the Russian Federation, including 21 ethnic republics. With some of these republics the federal government has entered into treaties, thus modifying the distribution of powers apparent from the federal constitution.

component While young legal professionals are crucial to the long-term survival and strengthening of the rule of law in Russia, older members of the justice system can be, and are being, reached as well

The most serious threat to democracy in Russia derives from its problematic economic situation Nevertheless, the impression persists that especially younger Russians, and particular those in the capital, show a remarkable dedication to the ideals of a free society and do want to avoid a return to the past Participation in elections is up In 1993, 54.8% of eligible voters took part in a referendum on the Russian Constitution, in 1995, 65% cast their vote in elections to the State Duma, and in 1996, 70% participated in the Presidential elections Efforts to stamp out corruption and organized crime are underway Contrary to the situation in other parts of the globe, e.g. Latin America, their prospects of success are enhanced by the popular perception that these activities are morally and legally wrong and should be suppressed Popular confidence in the justice system also is expressed in the fact of a significantly higher use of the courts their caseload has jumped dramatically Popular confidence in the justice system also is expressed in the unconfirmed, but widespread impression of a significantly higher use of the courts The (re)introduction of the jury trial in 9 regions of Russia has also increased people's and lawyers' participation in the judicial decision making process, and may, along with steady implementation of the newly enacted laws in both the commercial and political fields, contribute to the new system's taking hold in the hearts and minds of Russians

In the beginning, outside help to this process of strengthening the rule of law was largely direct and substantive With increased confidence and sense of sovereignty of the new Russians, foreign governments' and private organizations' priorities in the field of rule of law have shifted to the provision of assistance of a more technical nature This includes the training of decision makers, particularly legislative and judicial staff, and to the building of the institutions of a civil society The U.S. government's recent strategy of "partnerships for freedom" reflects such a change to a more equal type of relationship

5 0 PROGRAM ELEMENTS

5 1 Judicial Reform (Jury Trial Program and Advocacy Skills Training)

"Justice cannot be cheap " Moscow Regional Court Judge

Background

CEELI's judicial reform work formed a large part of its portfolio during its first 3-4 years in Russia. Objectives in early cooperative agreements charged CEELI with assisting in the reintroduction of jury trials. Broader judicial reform goals have been tackled by other USAID implementors, including ARD/Checchi, whose contract ended in 1997. Currently, Chemonics/National Judicial College is implementing a judicial reform activity, as is the CEELI DOJ program, although neither appears to include jury trial reform.

Advocacy skills training, though technically a form of CLE, is discussed in this section because it was developed as part of the jury trial work, to teach defense advocates the special courtroom and other legal skills needed for trials by jury. When the jury trial work ended in 1995, advocacy skills training became a stand-alone CEELI component that continued to be active until 1997. (See section below on Bar Development and CLE for a more comprehensive chronology of CEELI's use of CLE across several substantive applications, including the , advocacy skills training, and commercial law reform.) For structural purposes of discussion, both the jury trial work and advocacy skills training are referred to together in this section as CEELI's judicial reform program.

At USAID's request, CEELI phased out jury trial and advocacy skills activities by 1997, a shift that was formalized in April 1998 by a modification to the cooperative agreement. Nevertheless, CEELI's judicial reform program was evaluated to the extent possible. This task proved easier than anticipated since nearly all stakeholders interviewed had participated in CEELI's early work on judicial reform.

Findings

1 Assistance to Russia's Jury Trial Initiative

a The Politics of Reintroducing Jury Trials

The indigenous initiative to reintroduce jury trials in Russia has faced political resistance since its inception in 1992, and this resistance is the explanation provided by USAID/Moscow for ending CEELI's jury trial program. "We could see that the government was not going to adopt jury trials," said a USAID representative. "If the money and will are not there it can't be implemented."

The extent of the political resistance to jury trials is unclear. According to a Russian legal scholar, 50% of judges support the reintroduction of jury trials, while the majority of procurators oppose it ("it has become more difficult to prove charges", a judge said), and the majority of defense advocates support it. Several Russians commented that jury trials are politically problematic due to the perception that the government must be "tough on crime." "Much of the opposition to jury trials is

due to old concepts of power and it is more work," said the scholar. Although there is some support from within the executive and judicial government branches for expansion of jury trials, he said, a 1997 decree to expand jury trials to 12 regions failed due to "lack of resources." A Saratov Regional judge expressed the views of many stakeholders interviewed: "expansion of jury trials to other oblasts is inevitable and the current delay is due 100% to lack of financial resources."

A judge currently overseeing jury trials in the Moscow Regional Court said that the most common reasons offered by opponents of jury trials -- cost and the idea that juries cannot render intelligent verdicts or that people will be unwilling to act as jurors -- were the same reasons used for opposing jury trials in the 1860s, when they were first introduced in Russia, and that both arguments are specious. Regarding the first argument, she said, "justice cannot be cheap."

On the willingness and ability of potential jurors, the Moscow judge said, "I see intelligent jury verdicts every day." A Saratov judge said, "jurors are excited to be involved. No one tries to get out of jury duty." On the other hand, a Russian legal scholar said, "in large regions, it is difficult for people to travel to the capital for jury duty."

Views from defense advocates on the value of jury trials was expressed by a Rostov judge who hailed their use as a procedure that creates a more appropriate balance of power in the courtroom, replacing the largely unilateral confrontation between judge and defendant with a process that empowers and enhances the role of defense attorneys and forces procurators to improve their performance.

b CEELI's Jury Trial Program

CEELI's 5-year jury trial program was active. An early assessment of draft legislation ultimately contributed to the mandatory reintroduction of jury trials to nine of Russia's 89 regions in 1992. At Russia's request, CEELI strategized with Yeltsin's Presidential Commission on Legal Reform, the key Russian impetus behind the move to reintroduce jury trials, and conducted training activities for judges, advocates, and procurators, including several featuring U.S. legal experts and judges as well as all-Russian seminars featuring MOJ and GPU officials.

Other activities were ongoing. CEELI developed and printed a bench book on jury trials for judges that was consistent with the Russian Criminal Procedure Code, provided video and written material in Russian to judges and advocates, monitored the first jury trials in Saratov and Moscow, procured and distributed courtroom equipment to the nine jury trial regions ("we still use it" said a judge in Saratov), staged a mock trial, and provided liaisons to work in jury trial provinces. CEELI also mobilized a 20-member working group of U.S. judges, attorneys, court administrators, and technology consultants that was sub-divided into functional teams and dispensed to jury trial regions to provide technical assistance.

Judges, advocates, and other legal professionals in the four oblasts visited by the evaluation team reported positive results from CEELI's jury trial program. Examples include

- A "laboratory of scientific research on jury trials" was established by a group of Rostov judges, advocates, and law professors based on CEELI materials. They published manuals for judges and attorneys on the practice of jury trials in the Rostov region, and circulated them throughout the region and beyond, even as far as southern Siberia.
- A judge in Saratov, a jury trial region, said that CEELI provided him with information and tools that helped him work with the Center for Legal Reform at Saratov State Law Academy, which supports jury trial reform efforts. He reported enhanced courtroom skills, "better preparation, improved presentation, and better understanding of procedures and rules" by advocates and judges.
- In Moscow, judges and advocates spoke highly of CEELI workshops, seminars, and mock courts, stating that they still use skills in the courtroom that were taught by CEELI, that they highly valued their interaction with American jurists and specialists, and appreciated Russian-language educational materials. Reported one advocate, "we were very excited about the jury trial activities."
- An advocate in St. Petersburg was impressed by a CEELI seminar 2 years ago that featured a judge from Moscow who spoke about the jury trial experiment in that oblast. "This was very interesting for us in St. Petersburg," she said, "because we know that jury trials will come here soon."

In addition to such findings of direct impact from CEELI activities, impact at a higher level is noteworthy. Acquittals in the 8² jury trial regions have increased from approximately 5% to 16.5% since jury trials were reintroduced in 1993, according to Regional judges in Moscow and Saratov. A Moscow judge said that 80 percent of acquittals are appealed by the State, and among those appealed, 20% are overturned on procedural grounds. The evaluation team did not have the opportunity to independently verify these statistics.

The judges emphasized that total acquittals would increase with more training because reversals now are largely grounded on procedural errors. This view was echoed by defense advocates interviewed in Moscow, Rostov, and St. Petersburg (a non-jury trial region), who requested access to more training on jury trial procedures.

An overwhelming majority of Russians interviewed stated the need for renewed jury trial training and associated activities. A judge from the Moscow Regional Court suggested that jury trial trainings be expanded to include procurators, not just advocates. "They have told me they are interested," she said. A Saratov judge noted that training activities are needed but should utilize mostly Russian trainers, who are now more experienced, but said that an important impact from earlier trainings was

² Although 9 regions are legislated for jury trials, only 8 regions implement them in practice.

the establishment of "personal relationships with American and European judges this was very useful and I remain in contact with them," he said

2 Advocacy Skills Training

As the jury trial program grew, CEELI identified an increased demand for training that focused on courtroom and advocacy skills in the regions where jury trials were being reintroduced. In response to this demand, Country Director Mark Dietrich led the initiative to expand and enhance the advocacy skills training program. CEELI engaged U.S.-based legal training experts to help design and develop the Advocacy Skills for Defense Attorneys workshop, which incorporated a methodology and tools standard to such courses in the U.S. The interactive 2-3 day workshop used a criminal case study to cover the stages of a jury trial, jury selection, and other more general topics such as case development, admissibility of evidence, and closing arguments. CEELI also drew upon Chan Barksdale, a professional trainer with the Institute for International Education, to assist with standardization of training materials, monitoring and evaluation of training activities, and targeted training of trainer assistance.

While the Advocacy Skills workshop was designed initially for defense advocates in the jury trial context, it quickly proved to have broader appeal, as it attracted both civil and criminal lawyers, indeed, many lawyers in Russia practice both criminal and civil law, especially in the provinces. From 1993 to 1997, CEELI liaisons, legal specialists, and Russia country directors worked with Russian partners in Moscow and the provinces to implement Advocacy Skills workshops on a widespread basis. Following the usual CEELI approach, the advocacy skills training initiative emphasized a training of trainers approach that engaged Russians not only as instructors, but as participants in the ongoing evolution of the training curriculum.

Feedback from Russian trainers and participants of Advocacy Skills workshops was overwhelmingly positive, and easily found. Illustrative findings include:

- Advocates still use the skills in practice that they learned from CEELI workshops years ago, still refer to the workshop workbook, and desire continued training in this area.
- Both criminal and civil lawyers report benefits from the workshops. One advocate who attended the workshop two years ago as a criminal defense attorney now practices exclusively commercial law and said, "the advocacy skills I learned in the CEELI workshop still help me be a better lawyer now, even though I practice commercial law."
- The practice-based methodology and the quality of the training of trainers approach used by CEELI and its subcontractor IIE were excellent.
- Workshop materials have been used by Russians at their own initiative to strengthen indigenous programs. Professors at the private St. Petersburg Law School said that they have incorporated tools from the Advocacy Skills workbook into both civil and criminal procedure curricula, and the school's new moot court program, supported by CEELI, has adopted the teaching methodology provided in the Advocacy Skills for Defense Attorneys Instructor

Notes "We shared these materials with all of our colleagues," said one professor, "and everyone uses them "

- CEELI did an excellent job at incorporating the Russian context into its training materials and used mostly Russian trainers as instructors
- A strong sense of empowerment and confidence was gained from being exposed to knowledge, information, and skills aimed at improving advocacy skills
- An unintended impact was the development of professional relationships with colleagues "These trainings have made us feel like more of a collegium," said one advocate

"I understand the emphasis on commercial law," said one judge, "but I would prefer CEELI continue with advocacy training " In response, CEELI staff point out that the Advocacy Skills for Defense Attorneys curriculum is especially valuable and desired by advocates in the provinces, where criminal law is the "bread and butter" of the legal profession It bears repeating that site visits by the evaluation team were limited to Moscow, Saratov, Rostov, and St Petersburg due to time and logistical constraints

Conclusions

1 Objectives for CEELI's jury trial program and advocacy skills training were met CEELI contributed to the reintroduction and development of the institution of jury trials in Russia Jury trial legislation was enacted, jury trials were introduced and are still being employed in eight of the nine regions with popular support and a significant increase in acquittals, judges and advocates have acquired knowledge and skills needed for conducting jury trials, much-needed courtroom equipment was procured and distributed to nine regions, and is still being used, and well-received publications were produced and distributed In the words of a USAID officer, "if the objective was to institute jury trials and demonstrate the value of rule of law processes, CEELI succeeded "

2 The objectives for CEELI's jury trial work and advocacy skills training were appropriate The need for jury trials and improved advocacy skills is still cited by Russians as being a high priority for the development of rule of law, and judges and advocates from jury trial regions think that jury trials lead to more fair outcomes President Yeltsin requested U S assistance with the re-introduction of jury trials (they had existed for about 60 years prior to the 1917 revolution) and established a Presidential Commission on Legal Reform to work on the issue with Americans The jury trial system supports public participation and democratic principles by engaging citizens in the process of administering justice, and thus builds confidence in the rule of law Citizens appear to be willing and able to sit as jurors Legal professionals from non-jury trial regions are eager to re-introduce the practice CEELI's judicial reform activities support USAID/Moscow's Strategic Objective 2.2, Legal systems that better support democratic processes and market reform

3 Impact from CEELI's judicial reform program is apparent Advocates feel more empowered and more confident in their abilities to provide quality legal representation, judges feel more confident in the fairness of trials and more empowered by their sense of control of the trial process, the sense of collegium among legal professionals is stronger, acquittals in jury trial regions have increased and

75

judges report more fair trials, reflecting improved due process, use of jury trials leads to increased public confidence in the rule of law and democratic practices, increased public participation and interest in democratic practices, and thus deepens the legitimacy and acceptability of democratic norms by demonstrating a direct link between citizen involvement and rule of law. Unintended impacts include the use of training materials, knowledge, and skills by Russians to strengthen indigenous programs not specifically targeted by CEELI. The extent of this kind of impact is potentially unlimited as materials and methodologies are shared and distributed throughout the country.

4 The sustainability and replicability of the jury trial system are open questions. Although the 8-region experiment appears to be successful, there is reluctance on the part of the State to fund the re-introduction of jury trials in more regions, citing the high cost. There is also opposition to expand the use of jury trials because of the political pressure to be tough on crime and the tougher task it creates for procurators to win convictions. It could be a dilemma for the State: can a national judicial system rationalize the use of jury trials in only 8 of 89 regions? On the other hand, the growing "regionalization" of authority, power, and practice may sustain the co-existence of diverse systems for some time. Despite the apparent success of the limited reintroduction of the jury trial experiment, donors such as USAID have been reluctant to invest more resources in jury trial programs due to such obstacles. However, the most important indicator of sustainability for the expansion of jury trials is the growing public support for due process detected by the evaluator. In the end, expansion of jury trials will result from political pressures generated by public demand.

5 The sustainability and replicability of CEELI advocacy skills training activities is strong. Judges and advocates alike report a broad-based demand for advocacy skills that can be utilized by both criminal and civil practitioners. Such fundamental skills as building the theory of a case, techniques of persuasion, principles of evidence, witness examination, preparation of closing arguments, and drafting of pleadings are still used by trainees and are needed by all lawyers. CEELI contributed to the sustainability of future programs through the systematic training of Russian trainers and the adaptation of the Russian legal framework and context into training materials.

Recommendations

1 USAID should conduct an assessment of the current status of the reintroduction of jury trials in Russia, including a comparative evaluation of the success of the jury trial experiment in 8 regions versus the 81 regions that don't implement it, an examination of the political and economic viability of expanding jury trials to other regions, the level of public support for expansion, assistance that is needed or desired by Russians in support of such expansion, identification of support being provided by other donors or institutions, consideration of how USAID might support expansion, and how such an initiative relates to the mission's rule of law objectives. It could be beneficial to utilize CEELI in this assessment process.

2 As part of CEELI's ongoing CLE program the Advocacy Skills workshop should be adopted for use in new substantive areas of CEELI's Russia program, such as commercial law and gender. The Advocacy Skills workshop should also be considered for re-introduction as a stand-alone training that could be re-structured for use by both criminal and civil practitioners and offered to both, either in

separate seminars or joint seminars. Specific criminal and civil case exercises could be implemented through break-out groups, a technique employed in previous Advocacy Skills workshops. Advocacy Skills training should include outlying provinces where such skills appear to be much needed. Advocacy skills training supports USAID's IRR 2.2.3.2, Improved Continuing Legal Education.

3. As part of CEELI's ongoing legal education reform program, law schools could conduct more moot court exercises using the jury trial framework and law school associations could participate in educating the public as to the benefits of jury trials through street law programs and other community outreach efforts.

5.2 Commercial Law

"It's the only thing we have that teaches us the latest information." Russian Advocate

Background

As noted above, in 1997 USAID requested that CEELI implement a substantive shift to commercial law. Objectives stated in the April 1998 modification include: 1) develop a commercial law CLE program geared primarily to commercial lawyers in provincial cities, 2) develop a Moscow-based commercial law CLE program geared primarily to Moscow's commercial lawyers, and 3) develop self-sustainable CLE commercial law programs through indigenous NGO capacity. Intermediate results addressed include More Effective Bar Associations and Improved Continuing Legal Education. Regarding higher level objectives, a USAID official explained, "our priority was to get judges and lawyers up to speed on commercial law reforms, which would lead to the larger objective of strengthening the economy and increasing foreign investment."

Although CEELI had engaged in some commercial law activities in Russia in 1992-1995, its new commercial law program began in earnest in the fall of 1997, with the arrival of CEELI's first Russia-based country director, Michael Maya, an experienced commercial law attorney from the United States who had just completed a one-year term as a liaison in Uzbekistan. Maya, along with a new CEELI commercial law liaison, and the Russia-based IIE professional trainer, launched CEELI's new commercial law program in October 1997. Following an intensive 2-month needs assessment, consisting of telephone and personal interviews with more than 30 Russian jurists throughout the country, the CEELI commercial law team designed a program that featured two main CLE components: 1) 2-day commercial law seminars targeted to the provinces, and 2) twice monthly Moscow-based continuing legal education lectures on commercial law.

CEELI's new commercial law program built on the foundation laid by CEELI's advocacy skills training initiative in two important ways. First, CEELI established a wide network of Russian contacts in the provinces, especially through local professional collegia, during the 2-year period that the Advocacy Skills workshops were conducted across Russia. These collegia now serve as CEELI's key partners and co-sponsors in the regions for commercial law activities. Second, the methodology and tools that were developed and fine-tuned for the Advocacy Skills workshops are being applied and adapted to the commercial law CLE activities. Thus, while programmatic focus shifted, CEELI's

fundamental network and interactive training approach have linked their activities and enabled them to respond to changing objectives

Findings

1 Commercial Law Seminars

CEELI's commercial law team developed the 2-day seminar in collaboration with Russian scholars, advocates, and judges. Following CEELI's usual training approach, the seminar employs an interactive, practice-based methodology using a real case study. The workshop tracks a single commercial transaction from start to finish, and covers the following topics related to the transaction: formation of the entity, real estate, banking, shipping/customs, contract formation, taxation, and litigation. Workbook chapters, written by Russian experts with peer review, cover the current state of law related to each topic. The workbook is designed to serve as a basic legal text, or module, on commercial law in Russia; to this end, it contains sections on issue spotting and key questions for instructors so that Russians can use it as a teaching tool. Russian experts and law students, along with CEELI staff, modify the workbook approximately monthly as the body of Russian commercial law changes.

U.S. experts assist in the compilation and editing of the workbook, and also participate in the workshops as guest lecturers, but most of the training is conducted by Russians, and the Masters of Ceremony are Russians. Like the judicial reform program, CEELI's commercial law reform program has a strong training of trainers element. In less than one year, approximately 14 Russians are actively conducting seminars and training of trainer activities are ongoing. Another 40 Russian experts who have not been trained as trainers have been identified as potential guest lecturers.

The first Commercial Law Seminar was held in December 1997 in Krasnodar. Since then, CEELI has produced one seminar per month in six separate cities. Seminars attract about 30 participants each, a total of 200 have attended. Participants of the first six seminars paid \$25 each to attend, and participants of the most recent seminar, held in St. Petersburg, paid \$50 each to attend. CEELI has succeeded in recruiting local partners, particularly advocacy collegia, to help support and organize the seminars. The June 1998 seminar in St. Petersburg, for example, was co-sponsored by the local Collegium of Advocates, whose members also took the initiative, with CEELI's assistance, to update the seminar workbook to reflect recent changes in commercial law in the City of St. Petersburg.

To date, 400 copies of the CEELI Commercial Law Seminar workbook have been distributed to legal professionals across the country.

Participants and trainers of Commercial Law seminars from Moscow, Rostov, and St. Petersburg were nearly unanimous in support of the following key findings:

- Russians value and desire commercial law training that includes current substantive information. This view was expressed by a participant who said, "commercial law is a growing area of practice for lawyers and the laws are constantly changing. This program is the only thing we have that teaches us the latest information."

- The demand for such training is sufficient to support a fee structure for attendance. One lawyer said, "it is worth \$50 to attend, even more." The president of the Collegium of Advocates in St. Petersburg said, "the number of lawyers who want to attend and pay \$50 exceeds our expectations."
- Use of Russian scholars, trainers, special lecturers, and Masters of Ceremony is valued and the curriculum is appropriate to the Russian context. "I found this seminar very valuable," said one trainer/participant, "because the topics were relevant to current Russian conditions and laws and use Russian trainers—not like other workshops where U.S. experts come for a few days and leave."
- Seminar materials are used as reference documents in the course of daily practice and by professors in the classroom.
- CEELI's input has been invaluable. Participants particularly praise CEELI's organizational skills in conducting the seminars, the highly interactive teaching methodology, the exchange of information between legal professionals from both countries, the expertise that American lawyers contribute to the curriculum, and the financial and moral support consistently received from CEELI.
- The seminars have provided a unique opportunity for lawyers to meet their professional colleagues, develop important networks, and strengthen their sense of collegia.
- While participants are clear in their desire and need for continued CEELI support, both financial and technical, they believe that indigenous Russian organizations will be able to sustain this type of training over the long-term, with projections for such sustainability ranging from 2 to 5 years. Michael Maya of CEELI supports this view and believes that the demand for specialized commercial law sessions will increase significantly over the next several years, to the extent that commercial lawyers will be willing to pay substantially higher fees for extended courses on such topics as taxation, customs, investment, etc.

2 Continuing Legal Educational Lectures on Commercial Law (CLEs)

Twice a month CEELI holds a Commercial Law lecture (CLE) at its Moscow office. Each month CEELI identifies a theme for that month's lectures. Typically the CLEs are attended by 30-40 Moscow-based commercial lawyers, including many from Western law firms working in Russia. Since October 1997, 15 CLEs have been attended by more than 650 lawyers. CEELI distributes notices for each CLE to a roster of about 300 Moscow firms. Russian experts from the public and private sector are recruited by CEELI to conduct the lectures, which are followed by question-and-answer sessions. Lectures presented thus far have included topics such as tax planning, international commercial arbitration, intellectual property rights, and bank transactions. The evaluation team observed a lecture on anti-monopoly legislation, which was attended by approximately 35 lawyers. Unlike the 2-day seminars, no fees are charged for the CLEs. No information was collected on whether participants of CLEs would be willing to pay a fee to attend the lectures, which average

about 2 hours in length. CEELI staff point out that the CLEs are inexpensive to produce, about \$300.00 each (estimated cost in the provinces is much less), and produce a "big bang for the buck" due to their wide-reaching impact.

Regarding sustainability, CEELI asked the Moscow Chamber of Commerce to co-sponsor the lectures when the idea was being developed, according to CEELI staff. At first, the Chamber of Commerce agreed, but later reneged. Professional legal collegia in Moscow would have been inappropriate sponsors, said CEELI staff, because of their partisanship among lawyers. Such a partnership would have rendered the attraction of a broad audience "impossible," said Director Maya. Now that the CLEs are established and successful, CEELI intends to approach the Chamber of Commerce again regarding sponsorship. The CLEs are inexpensive to produce and the impact is so great that CEELI staff state that they are reluctant to charge an attendance fee, although they acknowledge that long-term sustainability would require that a fee structure eventually be introduced by the sponsoring indigenous organization.

Most lawyers interviewed who had attended a CLE or lectured at a CLE reported that they are extremely useful. Many of the comments mirror those made in response to the 2-day seminars above, on such points as the relevancy and timeliness of lecture topics, the increasing demand among commercial lawyers for access to such information, the high level of support and organizational skills of CEELI staff, the engagement of Russians, and the opportunity to network with colleagues. Said one participant, "I have attended many of these lectures and find them very important for understanding new legislation and practices."

A few attendees requested that more lecturers who are practicing attorneys be recruited, and fewer officials from government offices because, as one lawyer in attendance noted, "these officials don't always understand how such laws are implemented in practice."

3 Other Activities

a St. Petersburg International Arbitration Court (SPICAC)

CEELI was asked by USAID in the fall of 1997 to provide support to SPICAC, which was created in March 1997 as an NGO and previously supported by the HIID/ILBE contract that has since ended. CEELI's Cooperative Agreement states that CEELI should support SPICAC "as warranted based upon performance and perspectives for future success." CEELI staff reported that USAID specifically requested that CEELI provide SPICAC with financial support, funds for which were not included in CEELI's FY 98 budget, in addition to technical counsel on how to become a viable alternative forum for the resolution of disputes.

Since September 1997, CEELI has supplied SPICAC with two grants and several technical consultations. Although SPICAC has continued its efforts to attract clients and build a viable institution, it has only heard two cases. In June 1998, CEELI Belarus Liaison William Heekin, an experienced arbitrator, spent a week with SPICAC staff assessing its viability. Heekin has recommended that SPICAC merge with the St. Petersburg Chamber of Commerce Arbitration Court, broaden its scope to include domestic as well as international disputes, market services to the private

sector, and significantly trim its overhead. According to CEELI staff, both SPICAC and USAID/Moscow agree with this approach. Heekin believes that this approach will support the long-term sustainability of the arbitration center. SPICAC already has well-trained arbitrators on staff, Heekin said, and developing the business successfully will require time and restructuring. CEELI intends to supply SPICAC with one final grant for the period June to November 1998, to assist in the process of scaling down and merging with the St. Petersburg Chamber of Commerce Arbitration Court. CEELI expresses an interest in continuing to work with the merged arbitration center to provide technical consultations.

b National Association of Securities Dealers (NAUFOR) Workshop

In April 1998 CEELI conducted a 2-day workshop in Moscow in collaboration with NAUFOR on corporate governance issues. Fifteen participants attended and paid \$400 each. Six authors commissioned by CEELI contributed to the workbook, which will be published by a private publisher and placed on the market. Evaluators were unable to talk with any participants of this workshop to obtain feedback.

c Law Practice Management Workshops

Michael Maya has engaged in discussions with various collegia of advocates about introducing workshops on law practice management, which would coach lawyers on how to establish a law firm, including business, finance, organizational, and other management issues. Three law practice management workshops were conducted by CEELI in Russia in 1995-96.

Conclusions

1. Objectives for CEELI's new Commercial Law program are being met. CEELI has designed and implemented commercial law CLE programs in the provinces and in Moscow. Bar associations are being strengthened through their collaborative participation with CEELI in the presentation of 2-day Commercial Law seminars that are co-sponsored by collegia of advocates in the provinces. Their increasing capacity to sustain such activities as indigenous organizations makes them more effective deliverers of continuing legal education to their members, strengthens their ability to provide a supportive association for members, and attracts more lawyers to become active collegium members. CEELI's commercial law activities have clearly succeeded in educating a growing body of lawyers, in addition to judges, in the complexities and nuances of the expanding and dynamic body of commercial legislation, both domestic and international. CEELI has succeeded thus far in the "Russification" of commercial law activities by assuring that materials are prepared by Russian experts and Russians are leading the seminars and lectures. CEELI supports USAID's higher level objectives of economic growth through its work to strengthen the economic law sector, which in turn improves the climate for foreign investment by contributing to a more sophisticated commercial sector in Russia. CEELI has met its objectives in assisting SPICAC and providing it with financial and technical expertise to direct it towards long-term sustainability, which will probably take several years due to the nature of the arbitration business.

2 Objectives for CEELI's Commercial Law program are appropriate. The commercial law sector in Russia is growing rapidly and the need for commercial lawyers to be educated on new and evolving legislation is unlimited. CEELI's Commercial Law program is supported by practicing civil lawyers as well as representatives of government, as evidenced by the impressive turn-out of commercial lawyers at CLEs, the diversity and prestige of the lecturers who speak at the CLEs, as well as the significant and broad-based support from local partners for CLE activities in the provinces.

3 Impact from CLE's Commercial Law program is apparent and impressive. CEELI has done an outstanding job at educating a large number of legal professionals on a wide range of commercial law topics, and should be especially commended for extending this program into the provinces. CEELI's activities have helped strengthen local collegia, making them more effective, distributed relevant and current information on commercial legislation to an audience that exceeds those who have been able to attend seminars and CLEs through the wide circulation of materials across the country, given commercial lawyers the invaluable opportunity to strengthen their associations and networks with colleagues, and supported Russian partners in the move to develop and sustain CLE initiatives.

4 CLE's Commercial Law program is moving towards sustainability. It is now only 8 months old and already has proven to be largely "Russified," which will be important to the long-term sustainability in the provinces of CLE activities like the 2-day seminars. CEELI has also demonstrated that commercial law attorneys and judges are willing to pay fees to attend well-prepared seminars, and it appears that the growing demand for continuing education in emerging areas of specialization will help support the sustainability of CLE programs by local collegia of advocates and other organizations. Sustainability of the twice-monthly CLEs has been more problematic, but CEELI is making a concerted effort to find sponsorship, and the low cost combined with high impact of the CLEs gives CEELI the opportunity to continue its search for appropriate partner organizations.

Recommendations

1 CEELI should continue to implement its Commercial Law activities. It should extend the CLE lecture series to provinces where local organizations or CEELI liaisons could help support the program, it should extend its 2-day seminar to more provinces, it should work with Russian partners to design and develop more advanced courses that would address the growing interest in specialized fields such as intellectual property law, and that could command higher fees, and it should continue to strengthen its training of trainers component.

2 CEELI should consider incorporating the advocacy skills curriculum into commercial law training activities, and perhaps develop a separate curriculum that focuses on skills more than substance, which could be offered in conjunction with the existing commercial law seminar, or separately.

3 CEELI should review its roster of CLE lecturers to assess whether more experts should be recruited who are knowledgeable about the aspects of implementing new laws in practice. CEELI should also assess the feasibility and value of charging fees for CLE attendance, and address the need for NGO sponsorship of CLEs. CEELI should continue its efforts to identify an appropriate Moscow-based partner for CLEs.

4 CEELI should assess the interest in a program on law practice management and develop activities to support such a program if it determines that there is sufficient demand, necessity, and potential for sustainability

5 USAID should re-evaluate the effectiveness and sustainability of the St Petersburg International Arbitration Court and assess whether a restructuring of SPICAC, based on CEELI's recommendations, should be supported CEELI assistance in such an effort should be limited to technical counsel, and CEELI should not continue to support the SPICAC through grants at the same level of financial assistance it has been providing, if at all

5.3 Bar Development and Continuing Legal Education

Background

Objectives

Earlier versions of ABA/CEELI's workplans for Russia reaching back to the very beginning of the Russia program stated as an overriding goal the "strengthening of indigenous professional legal organizations," mentioning, as possible partner, inter alia, the Federal Union of Advocates This goal was modified in the July 29, 1996 USAID grant to include the intermediate objective of "more effective bar associations," referring, as a projected structural activity, only to the "development of a non-governmental organization of women lawyers" References to the development of institutions of legal professionals have been absent from the ABA/CEELI workplans for Russia since February 1, 1997 and the April 29, 1998 USAID grant modification 02

The focus on continuing legal education (CLE), however, is a constant in CEELI's program From the beginning, there has been the stated goal of developing indigenous, self-sustaining CLE programs Originally separately mentioned were the goals of developing indigenous advocacy training programs, in cooperation with the Institute of International Education, and continuing assistance to implement Russia's jury trial initiative The July 29, 1996 USAID grant still mentioned training for jury trials as an important area of CEELI activity, alongside the development of indigenous CLE programs "Trial advocacy training" was the #1 activity for CEELI in the February 1 - July 31, 1997 workplan It has been absent from ABA/CEELI's workplans since August 1, 1997 USAID's grant modification 02 of April 29, 1998 formally underwrites this change of priority and mentioned as the premier CEELI activity in Russia the "development of indigenous continuing legal education (CLE) programs and other bar related projects for practicing lawyers, especially for commercial law training"

Context

Existing organizations of lawyers are collegia of advocates and bar associations Lawyers can only practice in criminal court, minor exceptions notwithstanding, if they have become members of a collegium of advocates The assembly of the collegia of advocates has been called *Advokatura* Bar associations, on the contrary, are voluntary and dedicated to the promotion of lawyers' interests

Russian federal law regarding the collegia of advocates has been drafted in various versions since 1992, but no bill has ever been passed. Thus, technically, the 1979 Statute on Advokatura in the USSR as well as the 1989 RSFSR Regulations on Advokatura are still controlling. These collegia are territorially-based and were organized in the Soviet past. They deal with issues of lawyer qualification and sanctions for unethical or illegal conduct. Already in Soviet times, they were perceived as enjoying a certain, and unique, measure of autonomy from the government, although, as CEELI's Resident Russian attorney put it, "[pressure from party or government bureaucrats, disdain on the part of the law enforcement establishment, negative reactions of many in the judiciary made the Bar to look like Cinderella in the family of legal institutions with her wicked stepmother - the Ministry of Justice]" (Vasily Vlasihin, Overview of the Legal Profession, Memorandum dated February 13, 1998, at 3). Lately, parallel collegia have sprung up and have been recognized in some of the more important and populous regions. In Moscow alone there are "up to ten such alternative advocates' entities co-existing with the traditional Moscow City Collegium of Advocates" (id. at 5). The critical issue looming, as of yet, all draft laws on the bar presented to the Russian legislature was whether all advocates should be members of the established collegia.

In the late '80s, the advocates fought hard to establish their own, free, independent, voluntary bar association. This "Union of Advocates of the USSR" was founded on February 24, 1989 -- only to split up, after the collapse of the Soviet Union, into the Federal Union of Advocates of Russia and the International Union of Advocates. Today, there is an assortment of local bar associations. The most influential national bar associations are the Federal Union of Advocates (FUA), now perceived as the leading organization, the International Union of Advocates, the International Non-Government Organization "Union of Lawyers," the Association of Advocates of Russia, and the Guild of Russian Advocates (an organization which conceives of itself as both a union-type bar association and a collegium).

Today, there are more than 28,000 advocates organized in 126 collegia, up from 25,000 shortly before the fall of the Soviet Union (Vlasihin, *supra*, at 4, 5). Besides, the Soviet Union had, towards the end, about 75,000 *jurisconsults*, i.e. salaried lawyers of enterprises, organizations, and agencies. There are other non-advocate legal professionals called lawyers-licensees (*juristi-litsenziati*), their number has been estimated at 1,500, and they engage primarily in business law. Also, about 10,500 notaries work in Russia. The overall number of *jurists*, i.e. persons with a basic law degree, has been stated at the end of the Soviet Union as 300,000, no newer figures are available (id. at 4-6).

The concept of continuing legal education for lawyers is, to say the least, "not well established in the country" (id. at 11).

Findings

According to its very first workplans, ABA/CEELI tried to establish an ongoing partnership with the Federal Union of Advocates (FUA), the leading Russian bar association. Primarily, it wanted to cooperate with FUA to, inter alia, develop indigenous training programs, to improve awareness of ethical issues, to publish newsletters/magazines, and to increase their parliamentary outreach to achieve objectives of the profession. This effort failed, and the February 1- July 31, 1996 ABA/CEELI Workplan for Russia notes, with "disappointment," that "[despite repeated overture,

meetings and some cooperation (e.g., on CLE programs), the FUA has not emerged as the actively engaged partner we hoped it would be" (at 3). As an alternative, this workplan stated, as short-term goal, the development of a "sustainable national association of women advocates," extrapolating from a successful local association of women's advocates in Saratov, and continuing work in the CLE field with local and parallel collegia. Although reaffirmed in the July 29, 1996 USAID grant, this institution-building objective was dropped from later workplans, and replaced by a substantive focus on "gender-related," or "women's legal issues" (see section V F on Gender and Law).

This year, at the initiative of CEELI, Siberian and Far Eastern Environmental Lawyers Association was founded, with 7 founding and 20-25 present members. The local CEELI liaison considers Irkutsk "ripe for" the establishment of an Environmental Public Advocacy Center (EPAC). See discussion on EPACs in the Evaluation Report on Ukraine.

The idea of providing continuing professional education to practicing lawyers is relatively new to both collegia and Russian bar associations. Lawyers in the Soviet era had few occasions to receive education after law school and an initial phase of practical training. After the fall of the Soviet Union and its concomitant revolution in the legal system, the need for education on the new laws and institutions was obvious. The substantive focus of these workshops, however, changed.

The first CLE workshop in Russia, conducted from April 18 to April 21, 1994 in Suzdal, was dedicated to jury trial advocacy, followed by 16 other such training devices for Russian criminal defense attorneys in cities throughout the 9 Russian regions implementing the constitutional provision on the trial by jury. An August 3-21 program in Springfield, Mass. and Washington, D.C. taught 16 Russian advocates jury trial skills and how to train other Russian attorneys in advocacy skills, in an effort to indigenize teaching in this area. Also, mostly in conjunction with the DOJ, CEELI organized 19 judicial training workshops in the field of criminal law, covering, inter alia, the role of the judge in jury trials. The February 1, 1997 workplan still stated that "[t]rial advocacy training has been at the heart of CEELI's program in Russia." This objective was dropped in the workplan starting August 1, 1997, at USAID's request. It now focused on the "development of a commercial law continuing legal education program" on the national level. Efforts related to criminal law reform were to be funded by a subgrant from the DOJ.

The focus on commercial law was not new, in fact the first workshop on "Commercial Law Training Techniques," using both American and Russian trainers, was held in Stavropol on April 28-29, 1995, followed by a June 26-29, 1995 workshop in Moscow on "International and Russian Banking" and a July 3-6, 1995 workshop in Kaliningrad on "Economic Freedom and the protection of Private Property." Four additional Commercial Law workshops were held at Astrakhan, Kalmykia, Cherkessk and St. Petersburg throughout the remainder of 1995 and 1996. The renewed emphasis on commercial law, as stated in the workplan of August 1, 1997 and reaffirmed in the April 29, 1998 USAID grant modification 02, produced a systematic series of 2-day seminars throughout Russia, devised by CEELI, conducted mostly by Russians, at times joined by U.S. guest lecturers, using interactive, practice-based training techniques, and basing instruction on a uniform seminar workbook, written and continually updated by Russian experts. Under the direction of Ms. Chandlee Barksdale, these workshops are well organized, announced to the local media, and followed up by an elaborate evaluation system. Originally directed at the younger segment of the lawyer population,

CEELI, as it proceeds into ever greater intricacies of the new commercial laws, attracts ever more interest among the older and more experienced members of the Russian bar. For example, the June, 1998 Rostov workshop is oversubscribed and has attracted experienced attorneys in the field. Also, CEELI continues its bimonthly CLE two-hour lectures on discrete topics of commercial law at its headquarters in Moscow, which started in October, 1997 (for details on the Commercial Law program, see *supra* at V B)

CEELI also put together local CLE programs throughout Russia in cooperation with local collegia of advocates and other organizations

One such example is the program in Saratov. The Chair of the Collegium of Advocates there works closely with the Director of the Saratov Legal Reform Center, a CEELI subgrant (2 grants totaling \$33,000)-funded, not-for-profit NGO under the leadership of a local law professor, to conduct monthly CEELI programs using interactive training techniques and Russians trained as trainers in the U.S. According to the participants interviewed, the workshop experience "changed [our] mentality about [the] role of [our] profession. Formerly, [we had] no contact with progressive ideas." Also, "The 'CEELI methods are the main benefit to us, Russians will learn their own law.'" "No other workshops helped us learn the interactive way of learning." The Collegium now receives "requests from other oblasts to conduct workshops." Money for this project now comes largely from outside the community. Russians actually participating as trainers compared to the persons trained is low, possibly one out of six trained actually teach in the program.

In Rostov-on-Don, CEELI established a successful CLE program in collaboration with the local Collegium of Advocates. Two CLE workshops are offered per month, attracting 25 to 35 persons each time. Starting with local lawyers trained in the U.S., the Collegium has thoroughly indigenized the program, selecting both topics and speakers and planning the event, two or three times. CEELI Moscow sent Russian experts to speak. Most of the speakers are judges from Arbitrazh Court, trial judges, lawyers, and law professors. Most of the trainers haven't been trained in interactive teaching methods, they awaited eagerly the "training the trainers" seminar to be offered by Chan Barksdale on June 24, 1998. The workshop was held at the Rostov Regional Court. The June 25-26, 1998 on commercial law was oversubscribed, attracting formerly absent older, more experienced attorneys.

The head of the Collegium of Advocates of Cherkessk was trained to train, along with other members of his collegium, in Saratov, Stavropol and the U.S. "We now teach our own advocates. We teach them what we have learned from CEELI so that they don't only read their lectures, but write on the blackboards, organize brainstorming, etc. We divide them into groups so that they can attack problems together." "People change" in these seminars, he said. Five of Cherkessk's lawyers have now been trained as trainers, and they have completed their fifth training session. They also have started a "School of Advocacy" in cooperation with Stavropol University Faculty of Law.

CEELI's regional liaison in Irkutsk, Cheryl Hill, who started her assignment in March 1998, hopes to establish a continuing lawyer training program there. The first CLE seminar, just completed and focusing on procedural issues in arbitrazh, civil and criminal courts, attracted 60 participants, including 20 judges, 20 law professors, as well as lawyers and members of the customs and tax police.

Organized by the local CEELI liaison in cooperation with a professor of Irkutsk Law School, such CLE seminars are scheduled to be offered every month

In addition to substantive law workshops, CEELI has organized a number of workshops on training indigenous CLE trainers. The program was given the highest rating by the participants interviewed by the evaluation team. Uniformly, the participants praised the "amazing communication skills" of their American "colleagues." CEELI "wants to cooperate with you." One participant stated that he hadn't seen a single trainer of CEELI who didn't have a combination of a highly professional attitude and an aptitude for teaching. Main attention was placed on the "ability to convey information." Participants mentioned that CEELI also reacted to feedback in that they corrected problems perceived by students of prior seminars. The program has now completed the training of 15 CLE teachers in the field of commercial law, and 32 teachers (8 of whom the trainers consider "excellent") in the field of jury trial. The latter are aided by teaching materials developed by CEELI, in particular a detailed participants' and an instructor's manual. The commercial law workshop participant's manual is soon to be complemented by an instructor's manual.

Conclusions

1 The first efforts of ABA/CEELI to strengthen independent legal associations were, for reasons that may be unrelated to ABA/CEELI's efforts, unsuccessful. The stated workplan objectives were not met and appropriately abandoned. Given the fractured landscape, personalities and politics of Russian lawyers' organizations, trying to assist the Federal Union of Advocates -- one of many, albeit the leading bar association -- in its institutional development and endeavoring to enhance its political effectiveness might have been a goal too ambitious to be reached.

2 Similarly, the more limited goal of developing a sustainable national organization of women advocates has not been achieved. In this case also, CEELI appropriately responded to the lack of strong indigenous demand for such an institution, and dropped the goal from more recent workplans. It can be revived if indigenous demand emerges in the future.

3 The impact of the CLE programs, however, has been broad, and is continuing. Continuing legal education plays to ABA/CEELI's strength, the resources and traditional focus of the ABA. They meet USAID's stated objectives and are successfully contributing to the goal of empowering Russian lawyers as a critical element of this country's civil society. They also have introduced the idea of continuing legal education into the culture of the Russian legal profession.

4 In particular, past efforts in the field of jury trial instruction and continuing efforts in the area of commercial law have proven extraordinarily successful, replicable and sustainable. They have reached the provinces and will spread. Of particular help in this context have been the training manuals developed and updated by Russian experts. They are of valuable assistance in the effort to indigenize the program, as are CEELI's Training the Trainers programs. Of great, and multiplying, effect also are U.S.-based training sessions for Russian attorneys. The only concern is that only a relatively small number of those trained are used as trainers.

5 Russian lawyers interviewed especially appreciated the interactive nature of the training. Substantively, they expressed a desire for a broader focus of these programs, ranging from commercial law to criminal law (jury trial and general advocacy skills), human rights law (women's and prisoners' rights), environment, etc

Recommendations

1 The objectives of ABA/CEELI in Russia should have a clear and steady programmatic focus. A longer-term perspective, based on a 3-year contractual relationship, should provide some stability to the activities and the public image of CEELI while retaining CEELI's comparative advantage of flexibility and responsiveness to demand.

2 In this vein, CEELI should continue its impressive work of continuing legal education in the field of commercial law. The process of fostering expansion to other cities and associations should be accelerated. Other areas should be explored, local demand should be taken into account.

3 A growing quantity of this work can be done by Russian experts. The trainers trained by CEELI should, however, be selected with a view toward choosing those individuals likely to use their skills in future CLE efforts.

4 While indigenous institutions are still evolving, there is, however, still a need for continuing CEELI involvement on the ground. CEELI should continue providing its guidance on methodology, train indigenous teachers, and provide coordination and assistance to local collegia and associations regarding topics and speakers, where appropriate.

5.4 Legal Education

Background

Objectives

With the exception of a sister law school program workshop held in Moscow on May 25-28, 1993, funded by USIS, the July 29, 1996 USAID grant to ABA/CEELI first introduced a legal education component to CEELI's Russia agenda. The goal of "strengthening law schools" (I R 2 2 3 1) was supposed to be achieved by "assisting law faculties to develop more practice based curricula." In particular, the law faculties of Irkutsk and Rostov were envisioned to develop either a clinical program and/or a legal writing program. Later workplans added other schools as well as an advocacy training program and the development of training modules for courses in constitutional, criminal and civil law.

The April 29, 1998 USAID grant modification 02 stays the course, with slight corrections and additions, when it postulates that "CEELI will continue to work on introducing practice-based teaching materials and methods into Russian law schools. This work includes activities to encourage the development of clinical legal education in Russia, the environmental law clinic in Irkutsk has already benefitted from CEELI assistance, as has the Sudarynya clinic in Taganrog, which works on

family law issues. A workshop on practice-based teaching methods will be conducted. In addition, a series of round tables on legal educational issues is to continue."

Context

Law schools in Russia have multiplied, and continue to grow. They are not only classical departments of state universities, i.e. law faculties, but are also, in Russian tradition, constituted by training branches of field-specific scientific or practical institutes. There are about 40 of these state university/institute type law schools. On average, law faculty are paid a salary of \$100 to \$200 a month which forces them to practice on the side or teach at several law schools. Increasingly, these traditional vehicles of legal education are joined by private institutions, mostly freestanding, some also parts of larger, university-style entities. At the moment, there are about 50 to 100 institutions that provide legal education in Moscow alone. State institutions require 5 years of legal instruction, private schools may be completed in 3 or 4 years. Admittance to law school requires a high-school diploma and a more or less rigorous entrance exam.

The framework of law school instruction is severely confined by a 1980 federal law mandating certain courses in the traditional civil-law mold, and leaving the individual institution only discretion to add specialized courses or seminars toward the end of the educational program.

Findings

ABA/CEELI action in the field of legal education took off in August, 1996. Prior to that, ARD/Checchi had the USAID portfolio in this area. A priority was to bring law teaching closer to the needs of law practice. The old Soviet (and, indeed, Continental) paradigm of legal education consisted in the mandatory offering of certain highly abstract courses, taught "vertically," focusing on the content of rules and their theoretical framework, throughout the five years of legal education, coupled with a few, if any, interactive seminars. Based on the demand of teachers, a law professor who had spent an extended period of time at the University of Washington School of Law in Seattle, as well as interested students, ABA/CEELI decided to try to nudge legal education closer to the needs of practice and to introduce practice-based teaching elements into Russian law school curricula.

As Russian professors visiting the U.S. had experienced, besides the teaching style, the curricula of American law schools differed most from those of their Russian counterparts in that they offered instruction in legal writing and clinical experiences (not to speak of practical courses such as training in trial and appellate advocacy, moot court, interviewing, counseling and negotiation, etc.). The local liaisons in Irkutsk and Rostov were tasked, in 1996, with the development of either a legal writing program or a clinical program at the respective law faculties.

Under the directorship of Professor Nelly Romanova, in the fall term of 1997, the State Law Faculty in Irkutsk and the Siberian environmental NGO "EPRA" established, with CEELI's assistance, the first environmental law clinic in Russia. CEELI provided guidance through an Irkutsk-based legal education specialist, and it awarded a \$14,030 grant used primarily for salaries, office expenses and a computer research database. According to the present local liaison, the clinic is supported by the present dean. The clinic presently has 18 students. A classroom teaching component is offered every

week, and a notation on the diploma is the extent of the school's academic credit for the activity. Also, a general civil law clinic was established at the Irkutsk State Law School.

In the Rostov region, under the directorship of Marina Onosova, the Sudarynya women's rights/family law clinic was established in 1997. Under an agreement with the law school of the Taganrog Institute of Management and Business, the clinic is to provide on-the-job training for ten third- or fourth-year students. Immediately, 10 students from that Institute applied, and eight actually completed their assignments. Now also students from Rostov State and Moscow are requesting to work in the clinic. The Sudarynya Clinic trains law students to effectively represent mostly poor women free of charge in cases of domestic violence, divorce, alimony rights, and employment discrimination. Regarding the problem of trafficking in Russian women, the director stated that, in one case, the clinic helped to prevent a female dancing group in danger of being trafficked from leaving the country.

The clinic supervisor has spent 12 years as a practicing attorney and has undergone U.S.-based training in August, 1997. Besides the CEELI Advocacy Grant of \$5,000, used primarily for computer equipment, furniture and repairs to premises, she also received substantial help in building the clinic from the CEELI resident liaison and its Moscow-based gender issues legal specialist. Compared with traditional American law school clinic, given the immense need for its services, the Sudarynya clinic, besides not being in-house, focuses presently more on the rendering of practical advice and support than on the provision of pertinent clinical instruction. In her detailed report to CEELI on the realization of the project, the director states that the Sudarynya clinic provided 156 citizens with legal assistance. She also states that "[all the claims prepared in the legal clinic got support by the court and were completely or partly satisfied]."

In the same region, the Dean of Stavropol State Technical University Law Faculty was the driving force behind her institution's establishment of a legal clinic devoted to four areas:

- legal support for students (already working, 8 students providing services),
- legal support to people in penitentiaries (information on the clinic and its services has been mailed to penitentiaries),
- legal support for victims of crime, and
- legal support regarding social security (6 students providing services at present)

CEELI had provided the Dean with thorough instruction on clinical legal education. She attended a CEELI regional workshop in Croatia and an August 1997 workshop in the United States on this topic. CEELI local liaison Jonathan Williams addressed her faculty on clinical legal education, Legal Education Specialist Pat Douglass gave a pertinent seminar in Stavropol on June 6, 1998, and the Taganrog dean shared her experience with Sudarynya. Stavropol State Technical University's Law Department has submitted a \$12,000 grant proposal to CEELI which would fund primarily office furniture, equipment and certain administrators' salaries. The proposal foresees the provision of services not only at Stavropol State, but also at affiliate institutions in Cherkessk and Pyatigorsk. It

also includes faculty/attorney supervision, preparatory and accompanying lectures, seminars and workshops, broad advertisement of the clinic's program, and participation in the public debate

The dean of Stavropol has "far-reaching expectations" for CEELI's clinical law program. While the heritage of Russian legal education will be "tough to get rid of," she thinks more practice-based methods of legal education will catch on and "improve future attorneys." She also thinks highly of the Socratic method of teaching and, starting this year, she will teach her colleagues interactive methods of instruction. A professor of Moscow State Legal Academy appreciates that clinics "prepare for the practice of law and help ensure access to the constitutional right to qualified legal assistance."

Clinics as well as legal writing and other legal skills courses have a hard time being fitted into the heavily regulated curriculum of Russian law schools. Clinics may be used to fulfill some practice requirement, the other courses would break the traditional mold. Thus, as of this time, no separate legal writing course has been instituted at any law school in Russia. In reaction to this regulatory reality, the Legal Education Specialist at CEELI Moscow, Mira Gur-Arie, in consultation with Russian scholars, developed a different, innovative approach to prepare materials that would introduce practice-based elements into the traditional, and nationally prescribed, units of instruction, i.e. the courses in constitutional law, criminal law, civil law, etc. To this end, she organized, in May, 1997, a workshop on practice-based teaching. She invited 18 Russian law professors, provided them with pertinent American materials translated into Russian (largely drawing on her faculty experience at New York University with Prof. Anthony Amsterdam), divided them into groups (constitutional/administrative law, criminal/criminal procedure law, civil/civil procedure law), and tasked them with writing Russian teaching materials in the various areas of their expertise -- modules of interactive teaching units centered around a hypothetical case. As with the materials on constitutional/administrative law which are built around an application for political asylum, the modules would try to teach four main skills: (1) how to meet a client [involving mock clinic, role-playing], (2) how to do legal analysis [identify client's goals & compare them to legally available solutions], (3) how to write effectively [prepare memoranda of law, protocols, etc.], and (4) how to achieve results within the legal system [meet & effectively address relevant government officials, judges, etc.].

Russian professors in charge of each group edited those materials over the summer, Ms. Gur-Arie looked the drafts over for style, and the materials were completed as three different workbooks in early 1998. The teaching modules were sent out to all the participants in the workshop. In addition, they were mailed to over 100 law school deans and professors. Some were taken to a workshop in Croatia and handed to law professors in Ukraine and Belarus. The original Moscow workshop participants now are using/testing those materials in their classes. The semester just ended, and faculty are collecting pertinent student evaluations and will provide assessments of their own. The lead editors of the constitutional/administrative law workbook and the one on criminal/criminal procedure law, are thinking of publishing the materials.

Prince Oldenburgsky Higher Law School in St. Petersburg, a progressive private law school with key faculty members who have attended U.S.-based training workshops, has integrated CEELI teaching modules into their traditional courses, in particular, civil and criminal procedure. The faculty

members interviewed found those materials “enormously useful” and have shared them with colleagues who used them to modify their courses. In addition to supporting these efforts, a \$5,000 CEELI grant was awarded to construct a moot court room, used to conduct mock trials and role-playing exercises.

Last, but not least, since February, 1998, CEELI Moscow conducts a monthly roundtable on legal education. This series is intended to be a forum for professors and law school administrators to discuss issues relating to teaching methodology and substantive legal education. Topics covered include legal writing, clinical legal education, commercial law, the development of practice-based teaching materials, and “Russian Legal Education in the 21st Century.” Invitations were sent out to deans and department chairs of 50 institutions that provide legal education in Moscow. Also, together with the Ford Foundation, CEELI will co-sponsor an international conference in July, 1998 on clinical legal education and human rights law, with 45 Russian and 10 foreign law teachers and activists participating.

Conclusions

- 1 The introduction of practice-based elements into Russian legal education is a worthwhile goal, given the dearth of formal preparation for the practice of law after law school is completed. Besides providing students with a live-client experience, clinics help, in whatever small way, toward satisfying the urgent need of large groups of indigents for legal advice and support. ABA/CEELI has met its stated objectives in this area.
- 2 Legal clinics of the pro bono and environmental kind are only in the beginning stages, if not in *statu nascendi*. They are directed by dedicated Russian faculty trained by CEELI, inter alia, in the United States, and they have provided measurable legal assistance to the extent they have been operational. CEELI has provided continuing valuable logistical and intellectual support. It remains unclear how, if at all, clinics fit within the curricular structure of the host law schools, in particular, if credit of any kind, e.g. by meeting a practice requirement, may be awarded. Also, the classroom component of the clinics as an educational experience is not always yet fully developed in the projects undertaken as of now.
- 3 Legal writing, advocacy and other skills courses are a difficult fit with the tight curriculum requirements of Russian law schools. CEELI Moscow and its legal education specialist are to be commended for finding a way around these requirements by helping to transform the content of the courses mandated. They are also to be commended for having Russian scholars write and put together workbooks including teaching modules to be inserted into relevant courses of civil/civil procedure, criminal/criminal procedure, and constitutional/administrative law. This revolution within the formal structure may break up the traditional structuring of the curriculum and already imports a switch from the traditional “vertical” teaching style to a more “horizontal”, interactive one.
- 4 The impact of these teaching modules is potentially broad and deep. They are presently being used in the classrooms of the 18 faculty members of the drafting group, in St. Petersburg and, possibly, other places. Since they have just been mailed out, their impact in other law schools will be measured.

only in the years to come. Judging from the reaction in St. Petersburg, they are very well received and support the move toward interactivity. In any event, their success is easily replicable.

5 The monthly roundtable discussions on legal education are valuable contributions to improvement of teaching effectiveness and, with the participation of relevant decision makers, including deans, can be engines of much-needed curriculum reform.

Recommendations

1 ABA/CEELI should continue and intensify its focus on legal education by introducing interactive teaching methodology and practice-based elements of instruction into the Russian law school classroom.

2 In particular, clinical legal education should be nurtured. Incoming Legal Education Specialist Pat Douglass' particular expertise, both academic and practical, in this area, should be used to enhance the academic rigor and organizational effectiveness of the present model projects, including faculty supervision, classroom components on professional ethics, interviewing, counseling & legal writing skills, as well as administrative chores, case management, etc. Her impressive work on the model projects in Ukraine, in particular in Donetsk and Lviv, should be transferable. The Stavropol project appears well-structured and may be a model for other, more general pro bono clinics. Other law schools should be contacted to develop a clinical experience.

3 Also, the place of clinics in the law school curriculum should be clarified. If there is a practice requirement for graduation, service in the clinic might be deemed to satisfy it.

4 The teaching modules developed by Russian faculty with the help of Ms. Gur-Arie should continue to be disseminated. Efforts should be undertaken to have them integrated into traditional classroom courses, or to have them made the subject of special (skills) courses if the curriculum is sufficiently flexible. Feedback of faculty and students on these materials should be carefully analyzed and responded to in rewrites of the manuals. After enough of these "test runs" have taken place, and the lead Russian editors have completed necessary revisions and updates, CEELI should consider assisting the Russian authors in publishing these materials.

5 Beyond the introduction of live cases and hypotheticals through teaching modules, ABA/CEELI should consider the propagation, by example, of general interactive teaching techniques in Russian legal education. The Socratic method, based on a rigorous dialogue of students and instructor on the merits/demerits of a particular decision, or the potential legal solution(s) to a hypothetical case would appear to be of particular benefit, as it is to American law students, to the law students of Russia. Such interactive styles of teaching could be introduced through exchanges of faculty, under a sister law school arrangement as possibly financed by USIS or the State Department's "Partnerships for Freedom" program, the co-teaching of comparative courses in substantive fields such as constitutional law, criminal law, etc., and/or extended studies by younger faculty in the United States.

6 The roundtables on legal education should be continued and also be used to discuss and promote ideas on education reform that may lead to structural changes in law schools and the curriculum.

5.5 Legislative Assistance

Background

Objectives

The provision of expert assessments of, or concept papers on, draft legislation upon request by certain key actors is part of ABA/CEELI's general menu of services, administered from Washington headquarters in coordination with local liaisons. After 1995, it is not mentioned in most of ABA/CEELI's workplans for Russia, one exception being the February 1-July 31, 1997 document.

The July 29, 1996 USAID grant included a prong of "legislative drafting assistance." It only referred to aid to regional legislatures in the mechanics of legislation. In support of the goal of "more transparent, open and informed process of legislation," ABA/CEELI was to hold legislative drafting workshops for each of the regional legislatures in Rostov and Irkutsk. The program was to "focus on how legislation is drafted and will address issues such as how a law should be organized, how to avoid confusion within a law, and methodologies to avoid inconsistencies with other laws." The February 1-July 31, 1997 ABA/CEELI workplan for Russia foresaw one legislative drafting workshop in Rostov in the spring of 1997, while "depending on local interest, [CEELI] may hold a second workshop in Irkutsk." The prong of legislative assistance disappeared from subsequent workplans and is not specifically listed in the April 29, 1998 grant modification 02.

Findings

CEELI has attempted, over time, to assist the legislative process in Russia on the federal and sub-federal level by providing technical drafting assistance, concept papers on areas about to be covered by legislation, and/or assessments of individual pieces of draft legislation.

Historically speaking, assessments of draft laws constituted the earliest form of legislative assistance. Overall, CEELI has, according to its own statistics, assessed 35 draft laws for Russia and some of its constituent entities, with the output peaking in 1993 and 1996 (1992 4, 1993 10, 1994 2, 1995 3, 1996 13, 1997 1, 1998 2, as of yet). At Washington headquarters, the evaluation team was provided with 24 of these assessments for its review. In the first two years, CEELI followed its model of full reproduction of the individual experts' comments, preceded by a rather brief synthesis deferential to the experts' remarks. This led to the result that, for example, with respect to the assessment of the 1993 Draft Russian Constitution, very thoughtful, scholarly remarks were preceded by a poor synthesis. Starting in 1995, reproduction of the individual comments has been omitted. Instead, biographies of the experts have been provided, and centerpiece of the assessment is a stronger-edited, expanded synthesis of the individual remarks.

CEELI assessment papers are often of high quality and, for the most part, tailored to the local needs. The best of them draw on the experts' outstanding substantive credentials as well as, if appropriate, their comparative legal background; they assemble a good mix of academics, judges and practitioners, as appropriate, they respond to the local conditions, and they produce a well-organized and cogent synthesis of the various valuable, sometimes idiosyncratic comments. Less successful were

assessments looking at the field of legislation from a purely, or predominantly, domestic U S perspective Positive examples include the 49-page, detailed assessment of the 1996 Draft Criminal Procedure Code whose 16 commentators include academics and practicing attorneys as well as legislative materials from Western Europe, and the commendably balanced analysis of the 1997 Draft Constitutional Law on Military Courts, drawing on 12 experienced American lawyers in the field Analyzes of draft oblast investment codes benefitted from the inclusion of non-U S experts and materials Counter-examples are the comments on the 1996 Draft Amendments to the Law on the Protection of the Natural Environment, which drew on the expertise of only four jurists, all from the State of Florida, and the assessment of the 1996 Draft Law on State Registration of Rights in Real Property and Transactions with Real Property which was done entirely by American lawyers and would have benefitted from the input of Western Europeans familiar with the civil-law procedures of registration of rights in real property

Eighteen of the 24 assessments reviewed by the team were asked for, and sent to, members of government intimately involved in the drafting of the respective law, i e chairmen or deputy chairmen of the respective legislative committees, the Constitutional Commission, the Ministry of Justice of Russia, the Moscow Mayor's Office and the Chair of the Legislative Assembly of St Petersburg, as well as the Regional Administration of the Rostov Oblast The remainder of these assessments were done for private or academic institutions

During the team's visit, none of the listed recipients of assessments was available to be interviewed CEELI also did not gather, in any systematic way, information regarding the fate of the draft legislation it had assessed The team was provided with anecdotal evidence of impact of some of its assessments throughout CEE/NIS

With respect to Russia, the Director of the Legal Department of the Foundation for the Development of Parliamentarianism in Russia was quoted as saying that "suggestions from the analysis of CEELI were used to improve the text of the draft law on lobbying," referring to a 1995 CEELI assessment paper "In particular," CEELI states, "the definitions were changed, allowing a lobbyist to be compensated or volunteer, individuals are allowed to be registered as lobbyists rather than the organization for which the individual works, provisions on methods of lobbying were made clearer, lobbying of courts was prohibited, a right to appeal arbitrary government actions was added, and provision was made for a review of the law's effectiveness after three years "

A second form of legislative assistance is the preparation and provision of concept papers detailing a roadmap of organization, issues to be addressed and possible solutions to a legislative body that wishes to make law in a given area CEELI has provided such start-up assistance for the region in various fields One particularly appreciated such concept paper is the one on media law A local media expert, head of an NGO affiliated with Moscow State University, has been cooperating with CEELI for the last two to three years With CEELI's permission, he translated a good part of CEELI's concept paper, the section on American statutory and case law, into Russian and made it 138 pages of his organization's 250-page book on media law in the United States Copies of this book were given to key legislators in the Duma, libraries and local and regional legislators He reports that his book sits on the desk of the Head of the Department of Administration of the President of the Russian Federation in charge of public relations He also mentioned that both his book and CEELI's

concept paper are accessible on his Internet website and that the particular value of the concept paper is its being tailored to the Eastern European/Russian audience. He also suggested that CEELI should pay more attention to media legislation and should draft a concept paper on telecommunications law.

In the area of technical assistance in legislative drafting, ABA/CEELI, on July 23-24, 1997, in conjunction with the National Conference of State Legislators, organized a regional workshop in Rostov-on-Don that assembled, *inter alia*, key staff members of the local legislature, the Rostov Regional Legislative Assembly, members of the Legal Department of Administration (Executive Branch), as well as law professors counseling legislative assemblies. Two participants interviewed, heads of staff and the Regional Legislative Assembly, and the Legal Department of Administration respectively found the workshop "very fruitful." "Most useful," in their view, were the Russian-language manual and materials provided to the participants. They often have to deal with law drafts submitted by non-lawyers that are put together badly. The Legal Department of Administration receives such drafts and has to edit them before they are submitted to the legislative assembly. It's representative greatly appreciates the structural guidance the legislative manual is giving her. "It is very useful for everyday work." The other participant also keeps it on his desk. Although he "found some weak points," he "benefitted greatly" from the book. Also, he was approached by staff of other North Caucasus legislatures (Krasnodar, Stavropol, etc.) about the manual and sent copies of it to his colleagues.

In contrast, both legislative staff personnel did not think the transplantation of substantive American laws was particularly helpful. The Chief of Staff of the Regional legislative Assembly only heard about CEELI's March, 1998 assessment of a Draft Rostov Region Investment Law during a recent trip to the United States when Russian colleagues from other regions asked him about it. As he later found out, the Rostov Investment Law had been passed before the CEELI assessment was received.

Conclusions

1 Generally speaking, the work of the Washington CEELI office in producing the ultimate version of the synthesized assessment has greatly improved, resulting in a well-organized and professionally written paper. The quality and usefulness of the individual assessment, however, still depends, to a large degree, on the quality of the experts consulted and their degree of immersion into the topic as well as their willingness to take into account the Russian context.

2 This team cannot independently assess the general impact of these assessments. No interviews could be conducted with the individuals who requested the assessments, and the only evidence that an assessment produced a change in actual legislation may be found in the letter quoted above and referring to the draft law on lobbying. Generally speaking, interest in adopting United States models of legislation appears to have diminished since the first days of the Yeltsin Revolution.

3 The concept paper on media was useful to the extent it communicated effectively the state of American law in this field. Its impact on legislation was not documented. It is useful not only to Russia's decision makers, but also to other legislatures and drafters of legislation in the field, to have that concept paper, and possibly other similar overview documents, on the Internet.

4 Most useful and of high and demonstrable impact beyond the region has been the instruction in legislative drafting offered to key staffers of the Rostov Legislative Assembly

Recommendations

1 Assessments should preferably not be conducted in a vacuum. They should, ideally, be part of a working relationship, if available, with the pertinent legislative or executive actors or other decision makers able to influence the process of legislation. In the absence of that, they should preferably be rendered within the context of CEELI's country-specific programmatic focus

2 CEELI local liaisons should formulate a brief statement of the country-specific context relevant to a proper evaluation of the draft law to be assessed, and this statement should be communicated to the experts. The draft syntheses produced by the Washington CEELI office should be reviewed with the local liaisons prior to being sent to the requesting institutions and/or individuals

3 CEELI should expressly condition its rendering of advice on draft legislation on the receipt of feedback from the requesting organization and/or individual regarding the use made of the assessment and the ultimate resulting legislation, if any, in the field

4 Workshops on the mechanics of legislative drafting should be conducted in other regions, possibly, again, first, with the help of experts from the National Conference of State Legislators, later by Russian instructors. Materials of general interest to legislative staff should be disseminated

5.6 Gender and Law

"Last year fourteen thousand Russian women died from domestic violence" ABA/CEELI Staff

Background

Most Russian observers state that well over half of all lawyers and advocates are women and most judges are women. The exception to this is the Procuracy, which is 70 percent male. This gender division of labor reflected relative power in the Soviet judicial system, where the state prosecutor was the key instrument of Soviet legalism. In a more independent Russian judiciary, the predominance of women on the bench and in the profession generally is seen by Russian feminists as a potential but unrealized asset for more intelligent and sensitive treatment of issues such as domestic abuse and sexual harassment in the workplace. All admit, however, that traditional attitudes about sexual crimes prevail, even among women judges.

American women working at ABA/CEELI, in USAID and at the Embassy in the early 1990s gave moral and organizational support to Russian gender advocacy groups. USAID NGO programming target funds to partnerships between NIS and American women's organization. CEELI programming on women's legal issues in Russia began in 1994 with an August workshop in Moscow on "Women's Issues and the Law", attended by 18 persons. Several more meetings were held in 1995 and 1996 with CEELI support, but the Gender and Law issue did not become a formal CEELI objective until the USAID - CEELI Cooperative Agreement was modified in 1996/97.

Gender Issues in Law is now one of three agreed objectives in the ABA/CEELI - USAID Cooperative Agreement. The objective of the Gender program is two fold, to advance understanding of women's rights through dialogue, and to strengthen the role of women advocates in protecting those rights through the judicial system.

Findings

With the 1997 arrival of Legal Advisor Kristen Hansen ABA/CEELI's Moscow office involvement expanded significantly. Over the 18 months ending in June, 1998, 16 "Roundtables" and workshops were held on gender issues, two publications were assembled on legal rights, and two pro bono legal outreach clinics were established with CEELI Advocacy Grants, one in Taganrog, the other in Saratov.

Results of interviews with 9 women leaders and advocates in Moscow, St. Petersburg, Rostov, and Saratov were nearly unanimous in support of the following key findings:

- Russian public awareness of discrimination and abuse of women has increased, especially in major cities. ABA/CEELI roundtables and workshops have contributed to raising level of attention to the issue by Russian advocates. These events are very highly rated by Russian interviewees for their professionalism, the materials, and the resulting nation wide network of contacts and relationships resulting from the face to face programs.
- Russian judicial attitudes have not changed much. Procurators and judges are hostile to women's claims. Few cases go to trial, and in a recent trial of an alleged rapist in a major city, the judge refused to allow the victim's advocates in the courtroom.
- American women's support for Russian women has been invaluable, from the visit of First Lady Mrs. Hillary Clinton, to the efforts and personal commitment of ABA/CEELI Legal Advisor Kristen Hansen. ABA/CEELI roundtables, materials, and organizational capabilities are highly valued and praised by all respondents.
 - While the general consciousness raising and mobilization effort must continue, attention must now shift to more focused education of the judiciary and advocates.
 - Few cases of sexual abuse make it to the criminal courts reflecting a widespread bias against and hostility toward women who file complaints.
 - More advocacy training, counseling and legal support centers are needed in Russia.
 - Progress has been made, good laws are in place, but implementation is very weak.

CEELI's role in developing networks, providing the organizational "glue", and in developing and distributing useful Russian language materials is widely recognized, including the use of the Moscow office resources and space. That this support has been provided in a culturally sensitive and low profile manner is strong testimony to the effective style of the CEELI Legal Advisor for Gender.

Issues, Kristen Hansen As one Russian advocate said "Kristen is an 'invisible' great contributor" Another noted Kristen has "a good nose for what needs to be done "

Conclusions

1 Although Kristen Hansen came to CEELI directly from her law school experience, her experience as a women's counselor, her energy, and her supportive and responsive style made her, and CEELI, an invaluable resource at this stage of development of the Gender issue in Russia

2 The ABA/CEELI program has partially met the objective of advancing women's rights through dialogue, where progress has been encouraging, if limited still to several major cities The other objective of strengthening women advocates is just underway Until more cases are brought to trial and findings in favor of women plaintiffs begin to be recorded in significant numbers, the Gender issue will be stuck

3 The appropriateness of the objective depends on where one stands in Russia today Clearly a growing number of women are recognizing the importance of the judicial system as a means for advancing the rights of women, but the obstacles to positive achievement are many, and deeply rooted in traditional biases in the judiciary and elsewhere Objectively, a society which witnesses the death by domestic violence of 14,000 women is one which must do all it can to redress this injustice If the United States in its relationship with Russia is to be taken seriously in its admonitions about human rights, democracy and a rule of law society, it must stand with the Russian women and men who are taking the lead on this issue ABA/CEELI has made an important substantive contribution and can do more with USAID support

4 The impact of the CEELI Gender program has been intense, but limited A small network has been formed, clinics have been established, useful materials developed and distributed, and positive publicity gained The program is just beginning, and more resources need to be brought to bear before significant changes in judicial system's behavior on this issue can be measured

5 Whether the Gender Issues effort is sustainable is unknown at this time Russia has an enormous agenda of unresolved economic, social and political issues It will take heroic efforts on the part of a still small movement to find a high place on this agenda American support and commitment will remain an important part of this effort for some time to come ABA/CEELI efforts to help Russian lawyers begin bringing cases of abuses at home and in the workplace is tangible evidence that the U S commitment to human rights and due process is more than words

Recommendations

1 Using CEELI's proven capacity in practice based training, work with Russian trainers to target advocates, procurators and judges in the nine jury trial oblasts on issues of Gender and Law Test whether the jury trial system is an effective way to counter prevailing gender bias

2 Expand the number of women pro bono clinics while targeting leaders and staff of these clinics for special training and support

- 3 Link up clinics through networking and information services, reinforced by regular workshops and joint efforts to produce useful materials and guidelines Use networks as a data base for identifying and training Russian potential trainers
- 4 Focus on training for judges and part of a campaign to get more cases into trial courts
- 5 Assess the need and provide support for additional legislation and regulation in areas covering protective orders, rights of victims, unfair judicial procedures which deny due process Integrate findings into training and material production efforts
- 6 Use Advocacy Grants as a systematic part of the recipe for achieving stated objectives by combining grants with focused training and support activities Assist grantees to develop action strategies and realistic objectives to guide day to day work

This country report focuses on program evaluation results Although the team collected data on CEELI's organizational and management structure and performance in each country, these data have been reserved for inclusion in the final program report

DRAFT

**The American Bar Association/Central and
East European Law Initiative (ABA/CEELI)**

**Evaluation
Ukraine Country Report**

DRAFT

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	ii
1 0 BACKGROUND	1
2 0 ABA/CEELI IN UKRAINE	3
3 0 ABA/CEELI AGREEMENTS AND OBJECTIVES	4
4 0 RULE OF LAW CONTEXT	5
5 0 PROGRAM ELEMENTS	7

EXECUTIVE SUMMARY

The evaluation of the USAID funded ABA/CEELI Rule of Law program in Ukraine was conducted by an expert team from June 12 to July 1, 1998 based on an extensive Scope of Work prepared by USAID with input from ABA/CEELI. This report is part of a series of country evaluations which will be synthesized in a final program evaluation report submitted to USAID in January 1999.

The SOW directs the evaluation to address four main issues: whether 1) objectives were met, 2) objectives were appropriate, 3) there was observable impact, and 4) the impact was sustainable. In addition, the SOW requires the team to address the effectiveness of the program's institutional development efforts, and a number of organization and management questions regarding the strengths and weaknesses of the unique ABA/CEELI reliance on volunteers to provide technical assistance. The Country Report presents tentative findings, conclusions and recommendations for each program element. The final report, which covers all 22 countries where CEELI works, addresses organizational and management issues as well.

This Executive Summary will present an overview of impact, followed by main conclusions and recommendations for each program element.

Overview of Impact

Ukraine is a large country characterized by regional diversity and political divisions that have stalled Rule of Law progress. Development assistance providers working in Ukraine are all challenged by common exogenous constraints that include, *inter alia*, delayed legislation, old institutional structures, corruption, political in-fighting, and restrictive policies.

Despite such obstacles, CEELI's program in Ukraine has produced positive results. Impacts to date include:

- The Constitutional Court has been strengthened and educated,
- Regional judges have been educated in four oblasts, strengthening the national judiciary
- Model Environmental Public Advocacy Centers that should be replicated throughout the region have been established,
- National associations for law students, attorneys, and law schools have been established,
- A model law school clinic has been developed, and has started to be replicated in other law schools,
- Existing institutions, including pro bono clinics and lawyers' associations have been strengthened, and
- Legislative assistance efforts have contributed to policy reform.

Trademark CEELI assets that cross-cut these accomplishments include: 1) the drive and commitment displayed by volunteers, 2) the quality and relevance of legal expertise provided by CEELI, 3) the

interest and initiative in forging partnerships, and 4) the interest and initiative to reach beyond the capital and into the provinces

CEELI could intensify program impacts by 1) improving efforts to help organizations become sustainable, 2) introducing more systematic training of trainer programs, 3) considering a more Ukraine-based management structure, and 4) developing a long-term Rule of Law strategy in partnership with USAID that capitalizes on CEELI's strengths

PROGRAM ELEMENTS

A **Judicial Reform** *Conclusions*

- Objectives for assisting the Constitutional Court have been met due largely to CEELI's ability to forge a close working relationship with this new institution. The objective of establishing a national judicial association has not been met due mostly to political inertia. Objectives for judicial training at the Oblast level have been met. Ukrainians highly rate CEELI's impact.
- Sustainability is an open question, and largely depends on factors outside CEELI's control, such as the establishment of an independent judiciary and a national judge's association, and the commitment of Ukrainians to work as partners with CEELI.

Recommendations

- Continue support to the Constitutional Court, continue to assist in the establishment of a national judicial association if political will supports this effort, continue and expand judicial training activities, to include an assessment of additional regions that are ready for such assistance, and introduce more systematic training of trainer programs.

B **Bar Development and Continuing Legal Education** *Conclusions*

- The more recent objective of strengthening existing bar associations at the national and regional levels has been met through several successful partnerships with professional associations. Impact from CEELI's efforts is impressive, especially its success in working at the regional level with nascent organizations. The early objective of establishing a unified national bar association was not met and was appropriately abandoned by USAID and CEELI.
- Sustainability is questionable. Associations are not implementing the structures and organizational procedures that they will need for long-term sufficiency, and one, Justo Titulo, is dependent on CEELI funding.

Recommendation

- Continue support to Ukrainian professional legal associations, and work with them to help them become more legitimate and sustainable CEELI should introduce training programs that would build CLE capacity in partnership with Ukrainian associations

C Legal Education *Conclusions*

- CEELI met stated objectives by helping establish the Ukrainian Law School Association Building this institution is appropriate The impact of CEELI and its AALS and ABA experts on its development has been palpable The Law School Association is in its beginning stages and still has to develop its core agenda It is potentially sustainable since it has diverse and widespread support
- The Ukrainian Law Student Association is a major CEELI accomplishment Local chapters appear sustainable although in need of some outside financial support The national organization needs to find a permanent home
- The pro bono legal clinic at Donetsk State Law School is a model for Ukraine and other NIS countries It combines academic rigor, administrative professionalism, and practical impact Other law schools are following this model, and sustainability depends on securing a permanent funding source

Recommendations

- CEELI should continue to work with the Ukrainian Law School Association and possibly help it become an engine of curriculum and teaching reform. ABA could help in devising accreditation standards and procedures
- CEELI should continue to support the Ukrainian Law Students Association and try to make it more responsible and sustainable at the national level
- Through expert advice and Advocacy Grants, the law school clinics should be supported throughout Ukraine The Donetsk model should be replicated wherever possible
- Interactive teaching techniques should be introduced and practiced

D Environmental Public Advocacy Centers (EPACs) *Conclusions*

- EPACs are meeting objectives through legal casework, education and training, information dissemination, law school clinics, regional initiatives, and policy development Impacts from the EPACs are impressive the link between citizen participation and strengthened rule of law has been demonstrated, a wide range of stakeholders, from environmental offenders to citizen activists, have been touched by EPAC activities, and the scope of EPAC coverage is

nationwide Weaknesses are found in aspects of sustainability, but are being pro-actively addressed by CEELI

Recommendations

- Expand EPACs and strengthen regional links, assess the technical needs of each EPAC and design programs accordingly, improve aspects of sustainability of the EPACs and thus reduce reliance on CEELI for administrative, management, and financial planning

E Legislative Assistance *Conclusions*

- To the extent legislative assistance was formulated as a workplan objective, it has been met More recent legislative assistance efforts have demonstrated higher quality and more effectiveness than earlier ones In particular, impact from the legislative assistance efforts related to environmental laws has been salient Associations of legal professionals are now working with CEELI on their draft canons of ethics

Recommendation

- More closely integrate legislative assistance into programmatic initiatives, as in the environmental model, engage liaisons more in the legislative assessment process, provide assistance in legislative drafting, request formal feedback from Ukrainians who request assistance

10 BACKGROUND

This evaluation of the American Bar Association/Central and East European Law Initiative's (ABA/CEELI) Rule of Law program in Ukraine is part of a larger program evaluation of all CEELI programs in Central and Eastern Europe and the Newly Independent States (NIS). The evaluation was commissioned by the United States Agency for International Development's Office of Democracy, Governance and Social Reform in the Bureau for Europe and the Newly Independent States (ENI). An extensive Scope of Work (SOW) was prepared by USAID with input from ABA/CEELI. The SOW sets out detailed questions to be answered, and issues to be investigated. The evaluation was conducted by a Management Systems International (MSI) team made up of a senior development evaluation specialist, an attorney with rule of law development experience, and an European-educated law professor/legal expert with experience in U.S. and European law and legal education systems.

The evaluation began in Washington, D.C. on June 3, 1998 with extensive briefings from ABA/CEELI, USAID, meetings with other informed professionals, and an assembly and review of program planning and reporting documents submitted by ABA/CEELI and USAID. Field visits to nine countries began with Russia on June 15, visits to Ukraine, Georgia, Bosnia and Herzegovina, Macedonia, Poland, Latvia, and Lithuania followed. Before departing, the evaluation team provided the USAID mission with an interim oral report. Upon completion of all field visits in September-October, 1998, the team will submit a summary evaluation report.

USAID's purpose in commissioning this comprehensive evaluation is to determine: 1) the extent to which ABA/CEELI has achieved the USAID grant objectives, as well as Strategic Objectives and Intermediate Results, 2) whether those objectives were appropriate, 3) the sustainability of achievements, 4) to advance the reasons for success or failure, and 5) to receive the evaluation team's recommendations on how best to shape the relationship between USAID and CEELI in the future. An issue USAID emphasizes in the SOW is the extent to which ABA/CEELI activities contribute to the establishment, strengthening and sustainability of various types of legal institutions. The SOW instructs the evaluation team to assess certain "issues" related to CEELI's public service orientation, e.g., reliance on "pro bono" or volunteers for both short and long-term legal advisory roles, versus for-profit contractors, including a cost comparison of a CEELI volunteer vs. a for-profit consultant. Also to be addressed are issues of ABA/CEELI internal management, coordination with other vendors and donors and relationships with USAID. These issues are explored in detail in the final report, submitted in January 1999.

The methodology used by the team is standard for USAID evaluations, including document review, interviews with field-based implementors, USAID, US Embassy staff, and host country participants and beneficiaries of the assistance program. Field logistical support and interview appointments and schedules were prepared by CEELI field offices. USAID field mission input to the interview schedule was sought by the evaluation team to ensure that the diverse views and experiences with the CEELI program would be ascertained.

The evaluation team was in Ukraine from June 22 to July 1, 1998 including seven business days. It interviewed 102 persons, including 83 Ukrainians, 9 officials from other donor or intermediary

organizations, six ABA/CEELI liaisons, the CEELI Ukraine country director, CEELI local staff, three USAID officials, and one official from the US Embassy. In addition to Kiev, the team visited ABA/CEELI programs in Donetsk, Kharkiv, and L'viv. Among Ukrainians, the team met with local and national leaders from the Constitutional Court, regional courts, national level advocates and lawyers associations, local level lawyers associations, law faculty, advocates, lawyers, and law students. A complete list of all persons interviewed is submitted as an annex to this report.

The team worked with CEELI Kiev to generate data on CEELI programs in formats not normally used by CEELI for activity reporting.

The team considered using systematic data collection techniques, including mailed questionnaires, telephone interviews, and structured focus groups in provincial cities. In the end, local reports of low response rates, distrust of telephones, as well as insufficient budget limited the teams' data collection choices to rapid appraisal techniques commonly used in USAID evaluations.

2 0 ABA/CEELI IN UKRAINE

The structure of the CEELI office in Ukraine has evolved gradually from a one liaison- one legal specialist office during 1992 to 1996, to its 1997/98 complement of four American legal volunteers

The first ABA/CEELI liaison arrived in Ukraine in October 1992 and left in early January, 1993 for a stay of three months. The remaining 5 liaisons have all stayed for one year. The first associate liaison arrived in 1996, succeeded a year later by the current associate liaison who may extend for a second year.

Relatively short-term legal specialists have been more frequently assigned to Ukraine. Beginning with a six-month appointment in October 1992, there have been 17 legal specialists in Ukraine, most of whom were short-term, from one week to several months. One legal specialist remained in country for two years, and most recently, two environmental law specialists have served for one year to manage the expanding EPAC program.

The Ukraine staff is small, consisting of two law student interpreters, an office manager, a cleaning and cooking person, and a driver. CEELI has been in the current office space just under a year.

The CEELI liaisons in Ukraine are implementing the second largest program budget in the CEELI portfolio. All financial and program management functions are based at ABA/CEELI headquarters in Washington, DC. There is frequent telephone contact as well as field office visits by the Washington country director 3 to 4 times each year. Financial management is done by the Washington office, with program funds advanced to liaisons and legal specialists on an as-needed basis.

3 0 ABA/CEELI AGREEMENTS AND OBJECTIVES

ABA/CEELI objectives for Ukraine are set out in the omnibus agreement between ABA/CEELI and ENI, and are further articulated in 6-month workplans. These workplans and agreements tend to vary somewhat over time. Since this is a program evaluation covering 22 countries, the team has chosen to extrapolate those ABA/CEELI objectives which remain fairly constant over the life of the program. For Ukraine, ABA/CEELI has pursued the following broad objectives:

- 1 To assist in judicial reform,
- 2 To introduce modern legal technology and concepts supportive of a free market and democratic society,
- 3 To develop professional legal associations committed to raising standards and improving the teaching and practice of law,
- 4 To introduce modern, practice-based methods of legal education at the professional and academic level,
- 5 To improve the quality, relevance and coherence of legislative drafting and law,
- 6 To assist Ukrainians to use the law to empower citizen participation and to advance the general welfare, to help transform law from an instrument of state control to an instrument for the peaceful and fair resolution of disputes and the maintenance of just social order.

These CEELI objectives have ebbed and flowed over the eight years of CEELI involvement in Ukraine. Over the last year, CEELI has focused to a limited extent on the following, more immediate objectives:

- 1 Citizen empowerment through support to EPACs,
- 2 Expansion of Continued Legal Education for Ukrainian lawyers through support to Justo Titulo and direct organization of workshops,
- 3 Judicial reform through support to the Constitutional Court,
- 4 Strengthening of enhanced legal education through support to student law associations, organization of moot court competitions, and establishment of pro bono legal clinics, and
- 5 Enhancement of legal professionalism through support for specific associations of lawyers and advocates.

Both the general and specific objectives relate to USAID Strategic Objective 2.2, to promote democracy, citizen participation and rule of law in Ukraine.

40 RULE OF LAW CONTEXT

"We open our borders, but we don't open our minds " Ukrainian professor

Ukraine is a country with rich potential. It has one of the most fertile soils on the face of the earth, its mineral resources are immense, its people, 52 million of them, are well-educated and industrious. In the wake of the demise of the Soviet Union, it even has acquired all the accouterments of an independent state. Gone are the days when Ukraine was an international law anomaly -- a member of the United Nations, but only a subordinate republic of the Soviet Union. The breakup of the USSR has reverted it from 1,000 years of subjugation and made it a sovereign state again. It has its own President, its Parliament -- the Supreme Rada --, and a court system topped by a newly-installed Constitutional Court. The Constitution of 1996 has introduced the concepts of separated powers of government, individual rights, and the rule of law. Privatization and free-market reforms are underway.

Still, there are problems. The economic crisis goes deep. Ukraine's foreign debt is staggering, and its financial rating is about to be lowered to a point where it would be effectively excluded from borrowing on the world markets. As in Russia, and in other entities, heirs to the Soviet Empire, elderly people may be seen begging in the street, and the government may not have paid some of its employees for a long time. The government, in essence, pleads poverty. While taxes at all levels of government, according to estimates communicated to the team, would take an 88% bite out of a citizen's income, these laws are often not complied with and have been barely, at times selectively, enforced.

Beyond economics, the implementation of the promise of the rule of law has been slow. Apparently, there is no consensus or working majority of various political factions that consider judicial reform as important or a high priority. After independence, it took Ukraine five years to set up an institutional structure to govern the country. With the exception of the Constitutional Court, the structure of the judicial system is basically the same as it was under Soviet rule. Various draft laws on the judiciary have been suggested, and they have not been enacted. The same is true for the regulation of the legal profession as a whole, with the commendable exception of the creation of independent qualifying commissions and the introduction of bar examinations for advocates in 1992. The Civil Code, the Criminal Code and other pillars of the structure of New Ukraine also have not proceeded beyond the draft stage. In the last weeks, all legislation has come to a halt since the newly-elected Parliament cannot agree on a Speaker. Even when new laws have been enacted, the communication of their content to the provinces has been slow, and courts, particularly those in the regions and districts, face enormous challenges in terms of budget, physical space, personnel and equipment.

The Constitution established a tribunal to protect its prescriptive standards. This Constitutional Court now sees itself embroiled in a struggle for respect with the Supreme Rada. The Rada cut 40% of the Court's budget after the Court declared the Rada's retention of removal power over members of its own auditing commission an unconstitutional violation of the principle of separation of powers.

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In addition to these conflicts and resulting institutional stalemates on the national level, there is a deep cultural divide between the Western part of Ukraine and the East. Most of the East, and indeed, most of the country, still speaks the language of the dominant neighbor. In fact, Mother Russia seems still to hold a place in the heart of many Ukrainians. Also, formal institutions of New Ukraine appear, at times, eclipsed by the shadow powers of organized crime and corruption.

There are bright spots. Ukraine is a country with a critical mass of reformers, national- and democratically-minded citizens. It has a good constitutional framework. It is in serious crisis now, its fate as a nation may hang in the balance. Outside support for the new institutions, the economic structure, and the rule of law is essential.

5 0 PROGRAM ELEMENTS

5 1 Judicial Reform

Background

Objectives

Up to the very latest, the ABA/CEELI workplans for Ukraine did not contain any reference to judicial reform or judicial training *per se*. This area of activity was assigned to the ARD/Checchi Rule of Law Consortium. The workplan for May 1 through October 31, 1998, under the heading "Judicial Training and Association Building, aspires to achieve IR 2.2.1.1 ["Increased capacity of judges"] through the "Development of Educational Programs for Judges."

In detail, CEELI is tasked with (1) meeting with the judges and staff of the Constitutional Court on a regular basis to provide legal expertise on issues facing the Court, (2) working with the Council of Judges and members of the judiciary in establishing an independent judicial association as well as developing an effective newsletter, and (3) conducting judicial training programs in the oblasts, focusing on Kharkiv, L'viv and Ternopil.

Context

The Supreme Rada's proclamation of Ukraine as a sovereign republic of August 24, 1991 envisioned an independent judiciary. The 1992 Law on the Status of Judges sets forth a structure of the judicial system that will have to be changed as a consequence of the June 28, 1996 Ukrainian Constitution. This Constitution set forth that justice will be administered by a Constitutional Court and by courts of general jurisdiction (art. 124). It also states that "In the course of justice, judges are independent and obey only the law" (art. 129).

The Constitutional Court has been established, it began accepting constitutional appeals and petitions on January 1, 1997. At the time of evaluation, it had decided some 16 cases. The Court is comprised of 18 judges elected for a 9-year term, with the President, Parliament, and the Congress of Judges appointing six judges each. Its jurisdiction is modeled, by and large, after the German Constitutional Court, and it is the only judicial body in Ukraine empowered to exercise judicial review authority in the sense of being authorized to declare unconstitutional acts of the Government, in particular, acts of parliament, the Supreme Rada. In addition, the Constitutional Court, under Article 147 of the Constitution, has exclusive authority to interpret laws, a remnant of the authority possessed formerly by the Supreme Soviet. The latter authority may lead to conflicts with the courts of general jurisdiction whose final power to interpret and apply *subconstitutional* norms is a hallmark of their independence in the countries of Western Europe that have adopted a Constitutional Court.

The Supreme Court of Ukraine is the highest judicial organ of general jurisdiction under the Constitution (art. 125). At present, a separate system of courts decides commercial disputes, the so-called *arbitrazh* courts. Draft laws on the judiciary contemplate the creation of separate judicial divisions, each with its own appellate review body ("high court") under the unifying authority of the

Supreme Court a division each of civil courts, criminal courts, commercial courts, administrative courts, etc. As detailed *supra*, these bills have not yet been enacted, along with other major national legislation. Judges enjoy life-time tenure, except for justices of the Constitutional Court and first judicial appointments, which shall be made by the President for a five-year term. Other judges are elected by the Supreme Rada. Judges are organized in the Congress of Judges, and the Council of Judges performs functions both in the nomination and dismissal process relating to judges. Both are governmental entities. One of the controversial issues in the draft law on the judiciary is whether authority over nominations to judicial positions should lie with the Council of Justice or the Ministry of Justice.

Beyond the wrangling over the structure of the judiciary, the role and public perception of lawyers has changed significantly. Judges now are not afraid to make decisions against the procuracy, and they have ruled against the Executive Branch of government in various decisions.

Findings

CEELI has established contact with justices and staff of the Constitutional Court. One of the justices spoke at CEELI-sponsored judicial workshops in L'viv and Ternopil. He also explained to the evaluation team the structuring and functioning of the Constitutional Court. In particular, he stated that the Constitutional Court is the only judicial body in Ukraine "which produces precedent," working an "integration" of the systems of common law and civil law. In elaborating on this concept of "precedent," different from the Anglo-American tradition of interstitial case law, he said "the Constitutional Court's interpretation of the Constitution and the laws is "binding on all courts," it has a "monopoly" in this regard.

The Court, accessible to organs of the government, but also to individuals via the institution of a "constitutional complaint," has received, since its inception, more than 5,000 complaints. In 1997, 100 cases were considered, and about 11 cases "set precedents." This year, the Constitutional Court has already reviewed more than 80 cases, nine of them "precedent-setting." One of its members emphasized that the Court "is too young to assess properly its activity." The judiciary as a separate, independent power exists, in his view, only since 1995. To drive its importance home to the people, the decisions of the Constitutional Court are broadcast, and the Court holds press conferences on major decisions, with, from time to time, even justices appearing.

One of the Justices has had interactions with CEELI, off and on, since 1990 -- first as Dean of L'viv State University Law School, then as advisor and, later, deputy in the Supreme Rada. He knows the predecessors of present CEELI Rule of Law Liaison, Robert Liechty, in particular, Donald Reisig. He also is familiar with many other assistance providers, being a member of the supervisory boards of both the Soros Foundation and the Ukrainian Legal Foundation. He turns to CEELI for advice when he wants to invite professors/scholars from the United States. CEELI also helped to organize a couple of conferences in the Supreme Rada, with Judge Futey as a presenter, and to establish connections with foundations. Robert Liechty organized the seminars in L'viv and Ternopil at which a member of the Court spoke on the power of the judiciary and the right of citizens to lodge constitutional complaints. In addition, meetings with attorneys and law students were conducted on how to access the Constitutional Court.

Mr Liechty took part in those conferences. He surprised the Court by undertaking what one member called a "philological review" of one of the Court's decisions. Liechty took a "bureaucratically formulated" decision of the Ukrainian Constitutional Court, re-wrote into "Plain English," then the Court re-translated it into "Plain Ukrainian." The justice interviewed wasn't sure whether this model of writing opinions would prevail on the Court, but "we're thinking about it." He considers cooperation with CEELI helpful and is open toward it. He wished that there were more coordination between the various agencies and assistance providers.

One Scholarly Advisor for the Constitutional Court and Professor of Constitutional Law in his own right, has some background in the U.S. legal system. He studied for close to a year at a prestigious American law school with leading scholars in the field of constitutional law and the Bill of Rights. He also knows Western European systems well, in particular, the French. As scholarly advisor, he is responsible for drafting the final version of "his" justice's opinion. In his view, there was "no rule of law here" under the Soviet regime. The Court has just started to leave its mark on Ukraine, and it faces many obstacles. One example was the 40% cut by the Supreme Rada of funding for the Constitutional Court, just after the Court had declared a Rada law unconstitutional that allowed for Rada removal without grounds of officers charged with auditing the Rada. Also, some leaders come from the "old system," were not exposed to Western ideas and institutions, and see Western helpers as "spies." They operate according to the principle, "We open our borders, but we don't open our minds."

The scholar emphasized the role played by Mr. Liechty in working with the Court. "Bob is highly competent in constitutional law. He helps me a lot." Mr. Liechty assisted him with comparative material from the United States (cases, etc.). On issues of substantive constitutional law, he would consult with Mr. Liechty, on the organization of seminars, or bringing in professors from the United States, he would talk to ARD/Checchi. He states that it is "possible to give advice to the Constitutional Court," and he opines that the "work begun with Bob should be continued." In particular, he would like to see closer links established with the scholarly advisors and the people in the Secretariat of the Constitutional Court. It would also be very helpful to bring over clerks of the United States Supreme Court to share their experiences, and to bring professors of constitutional law for seminars, lectures, etc. with judges, attorneys and law students. Also young Ukrainian lawyers and students should visit and study in the U.S. "If we have more young people who have some Western understanding, we can substantially reduce our 20-30 years' wait for democracy."

CEELI Liaison Robert Liechty, with his background as U.S. constitutional law litigator, stated that the work with the Constitutional Court was "closest to [his] heart." Beyond the activities mentioned before, he has talked in seminars set up with the U.S./Ukraine Foundation, and has volunteered to translate court-picked Constitutional Court decisions for publication in the *BULLETIN DE JURISPRUDENCE CONSTITUTIONNELLE*, edited by the Venice Commission of the Council of Europe.

As far as the restructuring of the judiciary is concerned, CEELI has formally assessed the Supreme Court's 1997 Draft Law on the Judicature for Ukraine. The draft law has not been passed yet.

The President of the Council of Judges of Ukraine recognizes the need for a national judicial association independent from the government, with its own agenda and sources of funding. On the

basis of models from 14 other such associations in the region, CEELI drafted a charter for such an association, and the President sent this draft to a committee for further review and finalization. He is, however, of the opinion that it would be better to form this association after the new law on the judiciary is passed. Although CEELI continues to promote the importance of such an independent body, especially in light of the fact that the Supreme Rada may take years to pass the law on judicial reform, the President's opinion constitutes a temporary, but major roadblock to the realization of the idea. As long as there is no organization, there also is no newsletter, the development of which was foreseen in the CEELI workplan.

CEELI's focus in judicial training is on the regions and districts of Ukraine. It has assisted oblast and rayon judges in conducting judicial training programs in the regions. The team interviewed the Chief Judge of the Kharkiv Regional Court.³ He appreciated working with Mr. Liechty who he met at a Kiev Workshop on the Supreme Court of Ukraine. The Chief Judge and his colleagues liked Mr. Liechty's method and his approach, he asking them "What do you want?" and, following his initiative, they held a number of workshops in Kharkiv -- in 1997, one workshop for the judges of the Regional Court, one seminar for the chairmen of the District Courts, and one seminar for judges of specialized courts.

A judge from another Regional Court had participated in CEELI programs, roundtables and other meetings in L'viv and Ternopil. He considered them "very powerful" for all the judges participating, they had a "halo effect." "We reformers are helped by our association with the American Bar," he said. "We need the training CEELI offers." The judge reported that his courts are "totally inadequate." Their "physical space is crowded, recording of court proceedings is done in longhand," which is "inaccurate and outmoded." They often don't receive the current law, which is "not clear anyway." He estimated that there are "7-8 Regional Courts in equally isolated and decrepit conditions. Five courts get all the help" (mainly L'viv, Kharkiv, etc.).

Judges in his region feel "horrible because we look so ignorant." "No one in Kiev or other centers is concerned. No one cares about the educational level of the district courts." These judges "are thinking about forming a judicial association," but, as state employees, they are "very cautious."

As far as continuing education of judges on the national level is concerned, ARD/Checchi has funded the Supreme Court's Judicial Training Center, provided computer equipment, etc. CEELI plans to assist the Supreme Court's Training Center in identifying judges who are good trainers, teach them interactive training techniques and assist them in training in the oblasts. Initially, CEELI intends to

³ The number of cases handled by the courts in the Kharkiv Region has increased post Independence. Whereas the number of all cases (civil and criminal, trial and appellate) in the Kharkiv Regional Court was 335, it grew to 707 in 1991, 975 in 1994, 1545 in 1995, 1907 in 1996, and 2254 in 1997. The number of all civil cases in the Kharkiv district courts rose from 30,274 in 1991 to 40,422 in 1995 and 46,918 in 1997. Criminal cases in the same venues increased from 23,724 in 1991 to 33,700 in 1995 and 39,541 in 1997. One explanation offered by Chief Judge Bryncev for the high caseloads after 1994 is the great number of cases connected with financial pyramid schemes and wage-paying delays. Since 1992, the number of judges in his region has increased by 87 (mostly district court).

focus on Kharkiv, Ternopil and L'viv as sites of these regional training sessions. The idea is to establish judicial training centers in the regions.

Conclusions

1. The CEELI goal of meeting with judges and staff of the Constitutional Court on a regular basis to provide legal expertise on issues facing the Court has been met. This "legal expertise" has been sought after, and provided, primarily in the area of the technical drafting of opinions, with a view toward popularizing the language of the decisions, as well as with respect to translation of opinions into the English language. Also, in individual cases upon request by the staff of the Court, CEELI provided comparative law input on issues similar to ones decided in the United States. Also, there was the added feature of a liaison expert in constitutional law and constitutional litigation.

2. The objective was appropriate given both the preeminent importance of the Constitutional Court in the judicial structure of Ukraine and the expertise and inclination of the CEELI Rule of Law Liaison. While there will be probably less direct impact of U.S. decisions on Ukrainian Constitutional Court decisions in the future, there has been openness to information on how the U.S. legal system dealt with certain problems facing Ukraine, and the policy rationale of decisions, such as in separation of powers cases, has been found persuasive for the Ukrainian context. A critical mass of the personnel of the Constitutional Court is receptive to outside ideas, and will, in a mature way, just as the Constitutional Courts of Western Europe, listen to decisions of the Western legal heritage accept or discard them, as they deem appropriate. These open minds need to continue to be reached and supported. The more judges and staff are exposed to U.S. training and education, the faster a self-sustaining, indigenous rule of law regime will become a reality.

3. An independent national judicial association has not yet been established. It is blocked, *de facto*, by the stalemate of Parliament and the continuing lack of consensus on the draft law on the judiciary -- a precondition set by the President of the Council of Judges, who is generally supportive of the idea. In, inter alia, drafting a charter for consideration by the relevant judges, CEELI promoted this goal vigorously. Whether it is an appropriate goal, only the future will tell. The country needs a restructured judiciary, and that might drive a consensus on the draft bills. To set up an organization before such a law has been passed -- without, in effect, the Council of Justice, whose President is generally supportive --, might be counterproductive.

4. Judicial training on the level of the regional courts and district courts has been conducted, and several workshops and seminars have been held. It is an appropriate goal, and it has shown its impact in places such as Kharkiv, Ternopil and L'viv, reaching the relevant judges from the highest level down to the bottom where the need is the greatest. In addition, ARD/Checchi's mandate for judicial training expires in September, 1999. The issue is whether CEELI should vie for the national mandate of technical assistance to the Supreme Court's Judicial Training Center. CEELI has great experience and expertise in training the trainers, interactive teaching methodology, and regional judicial training. It could be of benefit to continuing education of judges in Ukraine as well.

Recommendations

1 CEELI should continue working with judges and staff of the Constitutional Court. Future Rule of Law Liaisons should be selected with a view toward being able to provide assistance of the same level as the prior Liaison, Mr. Liechty. Continued personal contact with key personnel and their use as speakers in seminars and workshops is important to the continuation of a fruitful relationship.

2 CEELI should try to work more closely with the cadre of scholarly advisors to the Justices of the Constitutional Court. For reasons of protocol and actual distribution of work, they could be more open to, and more in need of, the kinds of technical assistance CEELI is best at providing. Also, in order to popularize the work of the Court in establishing the rule of law in this country, CEELI should consider awarding a mini-grant for the publication and dissemination of materials on the emerging constitutional jurisprudence of Ukraine.

3 Given the present position of the President of the Council of Judges, CEELI should keep in mind and promote, but focus less energy than before, on the propagation of an independent national judicial association. Whenever the situation changes and a law on the judicial system is adopted, the effort could be reinstated.

4 Judicial training is one of the trademark activities of CEELI. The regional activities should be intensified, expertise from other regions regarding training methodology and content, if transferable, should be taken into account, and trainers should be trained -- with a view toward indigenizing the program in short order. An assessment should be done to determine whether there are several "isolated" district systems with sufficient commitment to reform to warrant development of an assistance strategy, which might include training, formation of local associations, development of funding proposals for legal information systems, and development of internal CLE programs for members of the bench.

5.2 Bar Development and Continuing Legal Education

Background

Objectives

Early CEELI workplans in Ukraine focused on the objective of establishing, in conjunction with the Ukrainian Legal Foundation (ULF), one unified national bar association -- as formulated, e.g., in the February 1, 1995 - July 31, 1995 workplan, a "strong, independent, professional organization of lawyers." This goal was maintained until recently when, in the August 1, 1996 - January 31, 1997 workplan, the impracticability of this goal was recognized and the focus was shifted to the strengthening of existing bar associations on the national and regional levels. The present workplan for May 1, 1998 through October 31, 1998 states that "CEELI continues to promote the establishment of strong, independent bar associations in Ukraine on the model of the ABA or state and local bar associations." These associations should support legislation that would limit the practice of law to "persons of good moral character who have graduated from an accredited law school and have passed a bar examination," they should "adopt and police canons of lawyer ethics," "provide continuing legal education to lawyers," and "promote good government through promoting

progressive legislation " Hopefully, "cooperation" between existing bar associations "will eventually lead to the formation of one umbrella organization "

Since the very beginning, the workplans have included the prong of "developing indigenous continuing legal education programs" for the lawyers of Ukraine

Context

There is no unified bar in Ukraine There are at least 15 bar associations The largest of them, the Association of Lawyers of Ukraine, which claims 50,000 members, is perceived as having retained its pre-Independence character which turns off reformists most of its members work for the government, the police, the procuracy, or state enterprises Also, the traditional divisions of the legal profession in advocates (they are virtually the only ones who can defend a person in criminal court and they are obligated, under a law of 1992, to pass a bar exam), lawyers (they only need a law degree, not a bar exam, to practice law, and a license from the Ministry of Justice), notaries (not allowed to consult and organized in the Chamber of Notaries), prosecutors and members of the police and other law enforcement personnel could not be overcome -- on the national level

The groupings of legal professionals of the New Ukraine have thus clustered around their specific job description, meritocratic background and expertise As far as advocates are concerned, their traditional *collegia*, are defunct The 1992 law established so-called independent qualifying commissions who are in charge of administering the bar exam, the admission of successful candidates, who have practiced for at least two years after graduating from law school, to the *advokatura*, and the sanctioning of unethical behavior (disciplinary proceedings) These commissions are composed of representatives of various branches of local government, the judiciary and the bar, and their decisions are appealable to the Supreme Qualifying Commission of Ukraine, again a body composed of representatives of various branches of government and the bar organizations As far as union-type organizations of advocates go, there is the dominating, 14-year old Union of Advocates of Ukraine (UAU) There are about 11,000 advocates in Ukraine This number is increasing dramatically while no comparative figures are available for the entire Ukraine, the number of advocates in Kiev has increased from 450 in 1988 to 1,500 in 1998 One-eighth of all advocates in Ukraine are members of the UAU Its president is Chair of the Supreme Qualifying Commission for the Bar

Non-advocate lawyers, especially those counseling Western-type businesses, are increasingly organized in the Association of Practicing Attorneys Of the early '90s' efforts to create a unified national bar, there remains the International Union of Lawyers, a rudimentary organization which claims 40,000 members, but engages in very few activities

Traditionally, lawyers' associations did not consider it their task to offer services of continuing legal education to their members or the public

Findings

For a long time, from the beginnings of the program in Ukraine until mid-1996, ABA/CEELI shared in one common goal of American rule of law assistance providers, from ARD/Checchi to Ukraine

Legal Foundation the establishment of a unified national association of all legal professionals. This goal proved to be unattainable, due to personal rivalries between the leaders of various subgroups of the profession and the fact that these leaders stressed differences rather than commonalities amongst advocates, lawyers, notaries, etc. For example, advocates emphasized the fact that they alone, since 1992, had to pass a bar exam, and are subject to mandatory professional standards and disciplinary procedures. They also, exclusively, enjoyed the attorney-client privilege. As representatives of an independent advocates' organization stated, in addition, to be in one umbrella organization for lawyers with "policemen, [former members of the] KGB and notaries would "endanger our independence." Nevertheless, ABA/CEELI, with backing from the Ukrainian Legal Foundation, supported the establishment of a national bar association comprising all legal professions. The strongest and most influential national organization of advocates, the Union of Advocates of Ukraine (UAU), complained about a pattern of new ABA/CEELI liaisons coming to them, urging them to join a national umbrella organization of all lawyers, and, upon UAU's negative reaction, leaving them, never to be heard from again throughout their tenure in Ukraine. As one of the leaders of UAU said, "Until this year, there was no good will in the ABA representatives to do what is useful to this country."

Outgoing CEELI Rule of Law Liaison Robert Liechty broke that pattern and forged, from the beginning of his tenure in September, 1997, a continuing, positive relationship with the leadership of UAU. In our interview with two leaders of the organization, they stressed that Mr. Liechty had a "totally different approach than his predecessor." Mr. Liechty gave a number of lectures at their "Institute of Advocacy," offered assistance in CLE, and is considered a friend. In particular, they looked forward to ABA/CEELI's assessment of their Draft Code of Ethics. In particular they looked forward to ABA/CEELI's suggestions as to who should adopt that Code, the Supreme Qualifying Commission of the Bar, the Congress of Advocates, i.e. all advocates, or others.

UAU's representatives also declared that they would appreciate a strategic relationship with CEELI, such as one of including them as "co-founders" of their "Institute of Advocacy", a private institution established in conjunction with Rector of Kiev State University, bypassing the Dean of Kiev State Law School. This private law school focuses specifically on the education of advocates. It aspires to teach advocacy skills in addition to the traditional law school curriculum. They stated that their faculty consists of the "best professors" of Kiev State, Kharkiv Legal Academy as well as top advocates and justices of the Ukrainian Supreme Court and Constitutional Court. They also feature foreign speakers, through the Council of Europe and Mr. Liechty. The Institute has admitted 150 full-time students and granted virtually no scholarships on a yearly tuition of \$2,400, in exchange, the faculty receives a salary two and a half times the amount paid at Kiev State Law School. Besides institutional support for this endeavor, UAU would appreciate CEELI support for a quarterly magazine that would be a high-quality forum for scholars, leading practitioners and members of the highest courts to share their ideas about the practice of advocacy, methodology, etc. CEELI was also asked to contribute to the comparative and international section of the magazine called "The Bar of the World."

ABA/CEELI organized and funded the founding conference of the Association of Practicing Attorneys (APA) of Ukraine. This group is composed mainly of the emerging class of business lawyers who facilitate national and international commercial transactions. There was no class of

private business lawyers organized in law firms ten years ago. There were only lawyers at state-owned enterprises. Today, there are about 8 -10,000 such "practicing jurists". Founded in the fall of 1996, the APA now claims 200 individual memberships and 60 institutional members, the latter being, in the main, law firms with 6-10 members each. The APA Management Council is composed of 24 representatives of local chapters. The first President has been elected for a three-year term, thereafter, the Presidency will last only for a term of two years. The organization is presided over since its inception by the head of a Kiev business law firm with 20 jurists, 2 advocates and about 20 staff. The APA does not have staff of its own, the President's law firm doubles as its office. Sources of independent income are membership dues and law firm donations. Their purpose is to develop professional ethics, deal with issues of legal education, student exchange, the cost of legal services, client policy, dealing with the government and information on legislation. The publication of a newsletter is contemplated, regularly scheduled meetings of all the members are every two years, the Management Council meets quarterly.

ABA/CEELI has helped APA in drafting their charter and has commented, rather strongly, on a draft ethics canon for their members. The President of the organization considered these comments "quite helpful". CEELI is expected to further assist with the formulating of the ethics code which will be debated and, hopefully, passed at a special meeting of the members in September/October, 1998. To answer the charge that lawyers, unlike advocates, have no strict sanctions for ethical misconduct, the APA intends to decree that if a violation of certain ethical rules is found by the organization, it will file a motion with the Ministry of Justice to denounce the misconduct of the lawyer in question (who could then, ultimately, lose his license). The APA would want to go beyond the present system of licensing lawyers and institute a system of "certification," i.e. specialization in certain areas that require the passage of certain tests/exams. The President of the APA also would like to work with ABA/CEELI in designing these specializations and developing CLE training programs to prepare for the pertinent examinations. He also appreciates ABA/CEELI's help in organizing 2-3 day workshops in commercial law or criminal law that would feature foreign experts in areas of need (i.e. banking, foreign exchange law, etc.).

As one of the Western assistance providers stated, there is a "sharp need" for continuing legal education in Ukraine. As there is no unified bar, there is no unified CLE program, there is not even a unified CLE program for advocates. The Independent Qualifying Commissions only deal with admissions, the bar exam, and disciplinary issues. There is a dire lack of basic literature, texts of the law, not to speak of commentaries on it, especially out in the regions. CEELI has had a continuing focus on continuing legal education. And, as one representative of a Western aid organization put it, "lawyers" are "CEELI's turf". Despite that fact, a \$2-3 million CLE grant proposal developed jointly by CEELI and the Ukrainian Legal Foundation went nowhere. For several years in Ukraine, it has fulfilled this prong of its agenda primarily through a Kharkiv-based regional lawyers association named *Justo Titulo*.

Justo Titulo was founded in 1995 under the strong leadership of Vyacheslav "Slava" Zhilinkov, as a self-help organization of lawyers preparing for the new free-market, rule-of-law future. The idea for the organization was inspired by a visit to ABA headquarters in 1994. According to its founders, its name meant to express the Roman-law concept of making decisions "according to the law". CEELI Liaison Donald Reisig, former President of the Michigan State Bar Association, "discovered"

Justo Titulo in 1995 and organized an unprecedented flurry of co-sponsored workshops, seminars and lecture presentations, the first one, a seminar on Business Law held in Kharkiv on October 20, 1995 attracting 100 participants, topped by the second, a Kharkiv seminar on human rights, which had 200 people attending. Since that time, CEELI has helped Justo Titulo organize 40 workshops on issues as diverse as family law, the new constitution, customs law, property law, tax law, securities law, media law, and the law on penitentiaries, sometimes with CEELI liaisons as speakers. According to CEELI statistics, the first 25 workshops had about 100 persons in attendance each, the later ones about 50. Justo Titulo has relied on CEELI's intellectual assistance, its knowledge of speakers around the country, and its financial support in printing materials and covering other costs of the meetings. Its seminars are presently offered free of charge, partly, as one CEELI liaison explained, because the organization had to pay taxes if they charged for the event. Justo Titulo has established branches in Donetsk, Dnepropetrovsk, Poltava, Simferopol, Crimea and Zhitomir (all Eastern Ukraine) as well as L'viv (Western Ukraine). All its materials are published in Russian. If needed, its leaders say, its materials can also be published in Ukrainian, especially if the seminar is addressing employees of the state. They think, however, that they "can't expand Justo Titulo nationwide."

The team witnessed one such seminar in Kharkiv, with 46 lawyers, 26 women and 20 men attending. We heard a lecture on bankruptcy law by a judge of the local *arbitrazh* court and saw a subsequent questions-and-answers period. Before the team arrived, also, a role-playing exercise had taken place. Participants rated the workshops highly. They found them "professionally done," "creative." They "upgrade knowledge and skills." They particularly like the "live discussion." CEELI's "financing of the workshops and the printing of the materials" was highly appreciated, it is difficult to get information on the new laws out in the regions. They also like the fact that the seminars are "free of charge," which is CEELI's policy due to the inability of lawyers, judges, and law students to pay a fee. Most of the people interviewed had attended multiple events, one as many as 20-25. Six interviewees had attended these events since the founding days of 1995. CEELI's best feature, according to the participants, was that they "find good people in Ukraine to arrange everything." They "chose the right people here." A functioning "lawyers association should do this." As to methodology, the discussion was "less active" than in the United States. They also appreciated the fact that evaluation forms are handed out after each meeting as well as acted upon.

The speakers are "leading legal specialists from the Law Academy [in Kharkiv] as well as some of the best practitioners and judges," including members of the Supreme Court of Ukraine. One lawyer, legal advisor to a bank, stated that he had attended lots of seminars held by different organizations, and he rated Justo Titulo's seminar at the "highest level" both in terms of presentation and content. Interviewees like the fact that they can ask questions and that they can communicate amongst themselves, in fact, are forced to do so via the technique of role plays.

The participants would like for ABA/CEELI to continue these workshops, "the more, the better," to focus on commercial law, tax, customs, banking, civil law, criminal law, as well as international law, generally to provide information on legislation which "changes a lot."

Finally, CEELI helped establish, with ProMedia/IREX, the Media Bar Association of Ukraine. It now has 18 members from different parts of the country including L'viv, Odessa, Kharkiv, Kiev and Donetsk. Its president successfully defended defamation suits brought by politicians accused of

corruption or other criminality against newspapers. She saw change worked through *perestroika*. Before independence, the situation was bad. As an advocate, she perceives that she now wins many times and that there are judges who act honestly. In fact, in her opinion, 80 % of the cases are decided according to the law, only 20 % are influenced by corruption. The new concept of property in a new economy and a whole array of consumers' rights have, in her view, contributed to the rising caseload of the courts. She found out about CEELI in the fall of 1997 when she met Liaison Liechty at a seminar on media law. The Media Bar Association's goal is to collect information about laws, decisions and issues affecting its members, disseminate this knowledge to them, provide training for judges and lawyers, teach journalists about laws affecting them, and organize roundtables. Ten days before meeting with the team, she had visited Moscow on a study trip and seen the Glasnost Protection Foundation, a model for her organization.

Conclusions

- 1 Given the deep divisions between the legal professions in Ukraine, the initial objectives of CEELI and other Western assistance providers regarding the formation of a unified bar association in Ukraine were unrealistic and could not be met. To their credit, CEELI and USAID changed the workplan in August, 1996 to reflect that reality and newly focused on the strengthening of associations of legal professionals, however specialized or regional they were. In particular, it was the most recent Rule of Law Liaison, Mr. Robert Liechty, who was credited with "breaking the ice" with the largest and strongest organization of advocates, the Union of Advocates of Ukraine (UAU).
- 2 The appropriate goal regarding the structural component of CEELI's mandate to enhance the rule of law through professionalization and empowerment of the private bar is the support, strengthening, and establishment, if necessary, of the various subgroups of the legal profession. CEELI has properly commenced a relationship of increasingly trusting interaction with the UAU. That interaction consisted mostly in the CEELI liaison's participation in panels and speaking at UAU functions or at the UAU-sponsored School of Advocacy. The relationship appears tenuous and in its infancy. The UAU appears strong, sustainable and, in many of its operations, including the publication of newsletters, self-sufficient. It wishes to deepen its relationship with CEELI.
- 3 CEELI has been the "birthmother" of the Association of Practicing Attorneys (APA). This association is intended to unite non-advocate lawyers engaged in the new field of counseling mostly corporate clients in international and domestic business transactions. The institution is small and fledgling, and has not experienced any real turnover of leadership. It has some way to go toward long-term sustainability and self-sufficiency.
- 4 The strongest institutional partner of CEELI in Ukraine, as far as lawyers associations go, has been Justo Titulo, a private organization formed in Kharkiv. It was founded before CEELI sponsored it, it was first recognized and strongly supported by former CEELI Liaison Donald Reisig. Since then, CEELI has supported Justo Titulo both financially and intellectually. Justo Titulo has consistently offered workshops to members of all legal professions in the Kharkiv area and beyond. The geographic reach of its activities has been expanded greatly. Its impact on the legal profession of the area has been impressive. They have developed a faithful, and growing, if not enthusiastic following who badly need the information and the materials provided by the training sessions. The

only questions are whether the organization is sustainable in the long run, whether it would survive a leadership change, or could expect to be self-sufficient in the near future. Also, its mostly short-term courses might not suffice to meet the needs of the audience. The new areas of the law are complicated and, to be fully conversant with them, days and weeks of intensive training appear to be needed.

5. A specialized national bar association has also been formed with CEELI help, the Media Bar Association. It is small, but growing and has to develop its organizational structure and range of activities.

Recommendations

1. CEELI should consider forging a closer alliance with the Union of Advocates of Ukraine by co-funding, and intellectually contributing to, some of their activities and projects. It should first of all, lend its full support to the effort of establishing a rigorous code of ethics for the members of this organization, drawing on the expertise and renown of the ABA in this area. It should consider co-sponsoring the UAU Magazine, contribute intellectual content to the international bar column, and overall enhance the academic quality and practical usefulness of this publication, a possible multiplier of reformist ideas and agent of change. CEELI should offer assistance in developing a strong CLE program with interactive training techniques and offer to train the trainers, drawing on its successful experiences in other NIS countries, in particular, Russia. Finally, it should review the advantages and disadvantages of taking an institutional role in the School of Advocacy co-sponsored by the UAU and Kiev State University.

2. CEELI should try to institutionally strengthen the Association of Practicing Attorneys by helping to organize professional activities and meetings, generate a newsletter, energize the membership, and aid in fundraising. It should support, and help see through, the APA's leadership's drive toward certification of certain specialty practices, rigorous admissions and ethical standards, and their enforcement through strict disciplinary sanctions and procedures. Also, it should draw on its strength by helping devise a CLE program tailored to the needs of the organization, i.e. primarily commercial law.

3. Justo Titulo should continue to be supported. CEELI should further strengthen the organization's extensive CLE program by offering to train its trainers, enhance and broaden interactive teaching techniques, and advising on speakers and topics. If asked for and needed, it should consider organizing 2-3 day or even longer workshops or training sessions on issues that need more in-depth treatment, i.e. most of the new laws relevant to the profession. It should contemplate carefully whether, with the present leadership and organizational dynamics, further broadening of the activities and membership beyond the eastern Ukraine onto the national plane would diminish or enhance its sustainability in the long run.

4. The Media Bar Association, both in terms of leading personalities and programmatic focus, is well-suited to contribute to the rule of law in protecting the nascent watchdog function of the press. It should continue to be supported both regarding the structuring of its organization and the provision of services.

5.3 Legal Education

Background

Objectives

Legal education is a relatively recent addition to CEELI's agenda for Ukraine, but it has become a core part of its mission today. While earlier workplans referred to law faculty mostly in the context of resources for continuing legal education programs, or as beneficiaries of USIA-funded-3-month training programs in the United States, the August 1, 1995 CEELI workplan for Ukraine foreshadowed an important future focus by mentioning, in passing, as one objective, assistance to law students in the formation of a National Law Students Association. This goal was elevated to an independent projected activity ("Support of Law Students Association") in the February 1, 1996 workplan. After establishment of the Ukrainian Law Students Association (ULSA) in May, 1996, the goals set thereafter detailed support for a range of activities, including moot court competitions, newsletters, expansion of membership, and internal strengthening of the organization. The present workplan (May 1 through October 31, 1998) continues this trend and focuses on intellectual and financial support for ULSA's biannual congresses, advice and training on democratic governance, leadership skills, programming development and organization, transparency and other NGO-related issues, as well as work with ULSA leadership to provide an Advocacy Grant to the organization that will allow ULSA to take increased responsibility for handling its financial affairs.

Another institutional goal, the founding of the Ukrainian Law School Association made its entree into CEELI workplans only in August, 1996. Then the goal was to form an association of all Ukrainian accredited law schools. After many steps toward achieving this goal have been completed, the most current workplan focuses on receiving approval of the association's charter at the organization's annual meeting in 1998, scheduling meetings on legal education reform, providing information on curriculum reform and law school financing, and assisting in the development of an association newsletter.

As an essential part of curriculum reform, the effort to restructure legal education to prepare the student more effectively for practice in the new political, social and economic environment, the more recent workplans, since August, 1996, emphasize the establishment of clinical programs at law schools. While the early intended venues for these clinics were L'viv State (in conjunction with the L'viv EPAC) and Kiev State law faculties, the most recent workplan focuses on Donetsk State Law School's as the model pro bono clinic for indigents, and proposes the establishment of further clinics at L'viv State, Odessa State, L'viv Commercial Academy, Kiev Institute of Labor and Social Relations, Uzhgorod State and Dnipropetrovsk State. The goal is to "offer students practical lawyering skills, help students develop a sense of what it means to be a member of the legal profession, provide legal services to people with little or no access to the legal system, and promote social change." To achieve these ends, CEELI intends to help bring about law school administration support and academic credit for the students involved, faculty supervision, as well as procure equipment and appropriate facilities. Its task was also to write a formal guide to setting up clinics in Ukraine and to place a Clinical Legal Education Specialist in Ukraine for an extended period of time (CEELI Workplan for Ukraine, May 1, 1998 through October 31, 1998).

Context

Structure, content and methodology of legal education in Ukraine still largely follows the pre-Independence Russian model. There are five leading law schools in Ukraine. The inherited elite institution is Kharkiv Legal Academy, with now almost 13,000 students. It has traditionally been the leading law school for educating Russian lawyers. The four other premier state law schools are the ones of Kiev, Donetsk, L'viv and Odessa. While Kharkiv and Kiev are considered to be somewhat resistant to legal reform, the law faculties at Donetsk, L'viv Commercial Law Academy, and Odessa are seen as more open-minded and reform-oriented.

Demand for a law degree has grown exponentially,⁴ and thus the "Big Five" are now joined by an increasing number of 119 public and private law schools. These private schools only need to fill out an application form to receive a license to operate from the Ministry of Education. They can apply for accreditation, but only after four years of actual operation. The license is issued upon the filing of a form which details accreditation requirements, listing, in particular, faculty, courses, etc. Members of existing institutions noted incidents of licensings of new private law schools based on false information (e.g. listing, as faculty, of professors from prestigious institutions without their knowledge), and there are newspaper reports about widespread corruption in grading in Ukrainian schools. These reports could not be independently verified.

A straightjacket for legal education reform is the present array of mandatory courses in which 2/3 are consisting of traditional course and seminar offerings, reflecting the civil law trichotomy of civil (or private), criminal, and constitutional/administrative (public) law. One third of the students' time during law school is dedicated to independent, unsupervised study. Reformist schools, such as the Institute of Advocacy co-sponsored by Kiev State University and the Union of Advocates of Ukraine, mentioned *supra*, take advantage of the latter time allocation to offer innovative, practice-based units of legal education. Also, the Ukrainian Legal Foundation now offers a program of postgraduate legal education, in particular for law teachers, through its Center for Legal Studies. The typical style of teaching is the "vertical" lecture. Students have no sufficient access to professors and teaching materials.

Findings

CEELI has participated in several ways in setting up the Ukrainian Law Schools Association -- which ARD/Checchi also claims as its initiative. First, CEELI Liaison Donald Reisig set part of the stage by organizing a May 7, 1996 workshop on comparative legal education methodology. Then, CEELI Liaisons Stephen Wolfberg and John Blavatsky joined Dean James White, long-time ABA Consultant on Legal Education and Dean Carl Monk, Executive Director of the Association of American Law

⁴ In the absence of national numbers, one example may suffice. According to the Dean of Donetsk State University Law School, the number of full-time students at his institution increased from 50 in 1993 to 350 in 1998. In addition, Donetsk has enrolled 150 part-time/correspondence students, and 100 students have chosen law as their second career. As the Dean explained, that does not necessarily mean that all law graduates will practice law. In this transition period to a free-market economy, everyone who wants to start his own business needs to know the law. Many of their graduates will go into business.

Schools (AALS) in a Kiev Conference of November 4-5, 1996 to discuss the issues and challenges of building a Ukrainian Law School Association. Thereupon, CEELI called a preliminary meeting of representatives of all the accredited Ukrainian law schools and 35 actually attended the meeting in the spring of 1997 at which issues of admissions, teaching methods, curriculum development, fundraising, clinical legal education, and the building of this association were debated. A committee of representatives from three large and four smaller law schools was constituted to draft the organization's charter. A first draft for this endeavor was submitted by CEELI Liaison Wolfberg in conjunction with Professor Victor Moraviv of the Kiev State Institute for International Relations, later the founding, and present, Executive Director of the organization. Meanwhile the Charter has been finalized and approved, and officers of the new organization have been elected. The Ukrainian Law School Association is modeled after the AALS, its formal registration is pending.

ARD/Checchi and its Rule of Law Consortium also provided support not only by financing the Association, but also by facilitating access to the traditional power centers of legal education in Ukraine, in particular, the Kharkiv Legal Academy. Kharkiv's Vice Rector Kamarov has been elected President of the Association. The first meeting of the organization in March, 1998 focused on issues of curriculum reform, the next one is likely to be on law school financing. CEELI intends to educate the members of the Association on the new types of curricular structure and content needed to prepare students for the practice of law in 21st Century Ukraine.

One original motive for this organization was the need to channel funds of an expected World Bank loan for the modernization of law teaching in Ukraine. CEELI's present focus is to move it toward taking a strong, even formal role in legal education reform. It wants to stay involved with it, in an "advisory function." According to ARD/Checchi's local representative, the law school association has two goals, (1) to build up the importance of law schools vis-à-vis the Ministry of Education, and (2) to give smaller law schools more power vis-à-vis Kharkiv Legal Academy, a goal Kharkiv supports. His organization's money for its support has, however, dried up, and the larger institutions, 17-18 accredited law schools, now have put up money to support the organization.

On May 18, 1996, the Ukrainian Law Students Association was founded. It consisted then of 16 member schools and two candidate members. CEELI and the Ukrainian Legal Foundation set up this organization with the help of ARD/Checchi funding. It was founded from the bottom up. In 1995, 14 local law student organizations (later ULSA chapters) received an overall Checchi grant of \$100,000 for setting up information and resource centers and procuring computers, printers, telephones and fax machines.

CEELI Rule of Law Liaison Erin Callahan consolidated the Ukrainian Law Students Association and organized national competitions for international law moot court competitions such as the American Jessup and the Dutch Telders contests. Students participating in this contest uniformly praised the liaison's work, resulting in this year's Jessup Competition's outscoring of the neighboring countries of Russia, Belarus and Moldova. Ms. Callahan is struggling with the issue of ULSA student officers neglecting their duties because of outside work, while she is trying to make the organization more fiscally responsible by awarding it an Advocacy Grant that entails certain budgeting, reporting and record-keeping duties. Also, given the yearly rotation of the ULSA governing boards, a problem with personal and spatial continuity arises since the organization has no permanent staff or office, or any

association it is affiliated with (such as the ABA Law Student Division) Originally, ULSA had an office with the Ukrainian Legal Foundation but since the Foundation left the field of law student activities, this arrangement has come to an end At the moment, only Ms Irina Pokanaj, administrative assistant of the CEELI Office for about 5 years and just-graduated law student of Kiev State, is the "institutional memory" of the organization

Ms Callahan sees the role of ULSA in "improving the quality of legal education, organizing international and constitutional moot court competitions and generally improving writing and advocacy skills " ULSA might also be the nucleus of a later umbrella bar association She used the organization also to assess where to start clinics The Kiev ARD/Checchi representative sees ULSA as an "ABA/CEELI success story," and would view CEELI's special focus "fitting best at the oblast level and working with law schools and bar associations "

Local ULSA chapter presidents, such as the one in Kharkiv, appear to be active and innovative with respect to fundraising and activities, including the planned organization of a legal talk show on TV The Vice-President of the local chapter at L'viv state reports that his organization's main purpose is to "upgrade the students professionally" and to organize "extracurricular activities " In detail, he mentions the Jessup, Gdansk and Telders International Law Moot Court Competitions as well as a Constitutional Law Competition in Kiev Turnover of presidents every year was handled well the organization started in 1990 with 20 members, now it has 60 members who are all paying dues (3 hryvnias per semester) CEELI taught them how to organize conferences and provided them with much-needed office equipment

CEELI Ukraine tried to establish contact with the traditional and the new law schools in the country It appeared difficult to reach, and cooperate with, the established law schools

Donetsk State Law School was more fertile ground for CEELI Former Rule of Law Liaison Donald Reisig had established first contact, and started a Youth Center for Law Students there, which became the moving force behind this institution's innovative in-house clinic For his role in assisting this effort as well as organizing the national round of the 1996 Jessup Competition, CEELI Liaison Donald Reisig is fondly remembered by the present director of the Youth Center as the "godfather" of Ukrainian law students The Youth Center fights for curriculum development and the inclusion of interactive as well practice-based elements such as clinics and moot court competitions It however, has not neglected good theory it has published high-quality proceedings, including papers presented, of the 1995 and 1996 Human Rights Conferences it organized in Donetsk It also publishes the Donetsk State University Law Journal CEELI provided it with computer equipment, fax, etc

The Donetsk clinic is supervised by two senior professors, chairholders in commercial law It focuses on poor clients and their legal problems, and students may substitute their summer internship requirements in their second to fourth years of study with this clinic In 1997, it had 83 cases altogether This year, cases averaged 5 to 6 a month, until CEELI Legal Specialist Patricia Douglass visited Donetsk during the month of April, 1998 As a result of her presentation -- Ms Douglass served as a long-time practicing lawyer and clinic faculty member of Baylor Law School --, interest in the clinic grew dramatically, and the number of cases taken in May alone rose to 28 The clinic is

run as close to the models in the United States as it can be starting in September, 1998, it will be a special, optional course in the third or fourth year, not just a program without academic credit To spread the idea, CEELI sponsored a pro bono seminar in Donetsk in April, 1998, participants in this event came from six universities throughout Ukraine, 14 students came from out of town, 10 from Donetsk

During the current workplan, CEELI has awarded the Donetsk pro bono clinic an Advocacy Grant of \$4,870, to be used for a small salary to the faculty supervisor, the student coordinator, a fifth-year student, and for computer access to the legal database LEGA Other assistance providers also recognize the good work done at Donetsk the Eurasia Foundation just gave the law school a \$24,000 grant for its clinic, to be used for salaries of the two faculty supervisors and the student coordinator

The Dean of Donetsk State Law School is a strong supporter of interactive American teaching methodology and desires ever more professor and student exchanges with the U S This year, one American law professor teaches at Donetsk, last year, there were two In particular, he would find it most helpful if comparative classes in constitutional, civil and criminal law could be co-taught by American and Ukrainian law professors Dean Volkov thinks CEELI is particularly strong in the following areas 1) curriculum reform, (2) CDs with U S teaching programs as well as syllabi, (3) the establishment of a general or specialized LL M program, (4) international recognition for their diplomas, (5) facilitating faculty and student exchanges

Other clinics have, or are about to be, started, CEELI considers their financial or at least intellectual support This goes for the very active students at L'viv Commercial Academy and the programs at L'viv State, Uzhgorod State and Berdiansk The Kiev Institute of Labor and Social Relations has instituted an externship program which, under faculty supervision, provides student legal services to indigent pensioners Students working in the Environmental Public Advocacy Centers (EPACs) in L'viv and Kharkiv earn externship clinic credit against their practicum requirement, the same will be true in the fall for the Kiev EPAC (see Section 5 4 below)

With the help of a \$3,100 Advocacy Grant from CEELI, L'viv State has renovated and furnished a room in its law school to house the new pro bono clinic The 12 students involved have worked on a regular schedule since the beginning of June, 1998, and they have taken in about 5 cases They provided the team with a schedule of office hours (three days a week), an intake sheet, and an announcement of their "Free Legal Services for Indigent Citizens" - a leaflet that they distribute in their apartment complexes, shopping centers, etc Two faculty supervisors and two practicing attorneys are formally assigned to them There is no classroom component yet, the students hope that the professors will teach them in the fall The two practicing attorneys are more helpful One of the students said, he talked with the outside attorneys "ten times or so", but "not really" with the faculty They don't appear to keep a formal case register and are not quite sure whether they will receive practice credit as expected under the agreement with CEELI They spent three days in April, 1998 in a seminar workshop on clinics offered by CEELI Clinical Legal Education Specialist Patricia Douglass

The Law Students League of L'viv Commercial Academy is the driving force behind the pro bono clinic at this institution with about 20 full-time professors and 7-800 full- and part-time students. Of the 35 members of the League, 12 are doing the clinic (they need to be fourth-year students). The clinic was started in October, 1997, and there are no limits as to the legal services it provides. Every evening from 4 to 7 p.m. the clinic is open to the public, two students serve each day. The two faculty supervisors, professors of commercial and civil law, were present at the meeting, and they are accessible to student inquiries and expressed a willingness to integrate a classroom component into the clinic enterprise. The students use a case register, fill in an intake sheet and open a file which will contain all the written work products and documents that accrue in the course of the handling of the case. They now are dealing with 60+ cases. CEELI has provided them with a computer and other office equipment. Students do not receive academic credit for their work in the clinic. The Dean of L'viv Commercial Academy has, however, provided them with a room in the basement. They need to have it renovated and furnished to make it usable as an office (at present, clients are received in a classroom).

Conclusions

1 ABA/CEELI has met its stated objectives regarding the establishment of a Ukrainian Law School Association. It has made major strides toward building an institutional framework that has the capacity of reinvigorating the academy and powering legal education reform. Helping to establish the Ukrainian Law Schools Association along the AALS model was a way to overcome pernicious friction between the traditional and the most modern institutions as well as the old and new faculties. The partnership with ARD/Checchi in drawing in the traditional law schools was an important strategic move. The goal of setting up such an organization is certainly appropriate. The Ukrainian Law Schools Association now needs to clarify its exact role in the universe of actors in the field of legal education: does it want to assert its expert role in order to participate in the process of accrediting new law schools? take part in the formulation of accreditation guidelines? does it want to be an engine of curriculum reform? from the top down -- Ministry of Education? or from the bottom up -- experiment in individual law schools? does it want to be a forum of scholars? does it want to focus on teaching? Since it is just coming into existence, the impact of the Ukrainian Law Schools Association cannot be measured yet. But it certainly has the potential of becoming an important actor in the country's civil society. That its funding after Checchi's withdrawal was taken over by its major members and that traditionalist as well as reformist institutions partake in this effort, is a good sign regarding its sustainability.

2 The Ukrainian Law Students Association is a credit to CEELI and meets the organization's stated objectives. Where it is strongest, and appears to be fully sustainable is at the local level. Its chapters have survived leadership changes, collect their own membership dues, and make good use of the material resources provided to them in 1995. The local chapters also organize scholarly conferences, participate in moot court competitions of various kinds, and are often the backbone of efforts to introduce clinical legal education. CEELI has helped the national organization tremendously by helping to organize and fund its biannual congresses, and by administering national rounds of international moot court competitions. The problem with giving an Advocacy Grant with its attendant reporting and administrative requirements is the lack of permanent office space and staff. In any event, the effort to establish and strengthen a national law students' association is definitely

appropriate, its impact on the many student members, the future elites of Ukraine, is well measurable, and its sustainability can be enhanced by giving it some personal and spatial permanent dimension

3 As far as clinical legal education goes, the real success story in Ukraine is the pro bono clinic in Donetsk. It is a model for other clinics in Ukraine, and for clinic projects in other parts of the former USSR. It has all the features that make it both a practical contribution to the clients served and a meaningful and rigorous academic exercise. Key to the success are its outstanding organization, from the recruitment of students to the planning of office hours, the well-formulated intake sheet, the distribution of cases, the close faculty involvement and supervision, the accompanying classroom instruction, academic credit, as well as full support by the law school administration. The CEELI CLE Specialist as well as the supporting student organization, the Youth Center for Law Students, had, and have, a critical role in this enterprise. The other clinics are on the way to following this model. The goal of establishing quality clinical instruction is appropriate. These institutions, once set up, provide valuable service to the community and the students. The impact in the various places has been well documented, and it is growing. Clinics will always cost money, as in America, since they serve the indigents -- so they can't be self-sustaining in the strict sense. Ultimately, as in America, the costs might be borne by the law school.

Recommendations

1 CEELI should continue to cooperate closely with the Ukrainian Law Schools Association. It should deepen its interactions with the leaders, mostly established law schools, and try to expand it to include the new law schools as well. It should help the association clarify its goals and hopefully contribute to making it a vehicle of meaningful curriculum and teaching reform. The Ukrainian Law Schools Association could introduce more effective, interactive teaching methods and practice-based elements of the curriculum such as clinics and moot court advocacy into Ukrainian law schools. The ABA could share its wealth of experience about objective benchmarks for the accreditation of new institutions. The ABA Section on Legal Education and, in particular, Dean White could give most useful advice on both standards and procedures necessary to ensure quality legal education.

2 CEELI should consider finding a "permanent home" for the Ukrainian Law Student Association, be it a national lawyers association, the Ukrainian Law Schools Association, or any other suitable professional organization, including a grouping of its successful alumni. An experiment with an Advocacy Grant and its reporting requirements should be undertaken.

3 CEELI should monitor carefully the clinical programs it supports both financially and intellectually. It should work to ensure maximum educational experience and practical usefulness. The Donetsk model should be replicated where possible.

4 CEELI should consider adapting to the Ukrainian context the teaching modules developed by Russian faculty with the help of CEELI in order to insert practice-based, interactive elements into traditional classroom courses, or to make them the subject of special (skills) courses if the curriculum is sufficiently flexible. Feedback of faculty and students on these materials should be carefully analyzed and responded to in rewrites of these manuals.

5 Beyond the introduction of live cases and hypotheticals through teaching modules, ABA/CEELI should consider the propagation, by example, of general interactive teaching techniques in Ukrainian legal education. The Socratic method, based on a rigorous dialogue of students and instructor on the merits/demerits of a particular decision, or the potential legal solution(s) to a hypothetical case would appear to be of particular benefit, as it is to American law students, to the law students of Ukraine. Such interactive styles of teaching could be introduced through exchanges of faculty, under a sister law school arrangement as possibly financed by USIS or the State Department's "Partnerships for Freedom" program, the co-teaching of comparative courses in substantive fields such as constitutional law, criminal law, etc., and/or extended studies by younger faculty in the United States.

5.4 Environmental Public Advocacy Centers

"I am now not afraid to defend my rights" Citizen Activist/EPAC-L'viv Client

Background

CEELI forged a partnership in 1994 with Ukrainian environmental NGO Ecopravo-L'viv to establish the pilot Environmental Public Advocacy Center (EPAC) in L'viv. EPACs were subsequently established with Ecopravo offices in Kharkiv in 1996, and Kiev in 1997. In addition to the Ukrainian EPACs, CEELI also established an EPAC in Armenia in 1997, and one is scheduled to start up in Moldova later this year. CEELI indicates that interest in future EPACs has been identified in Odessa, Ukraine, Irkutsk, Russia, and Belarus.

USAID/Ukraine supported the CEELI-Ecopravo partnership, recognizing that widely felt environmental problems could serve as a catalyst in the development of rule of law by promoting citizen advocacy. It follows that the purpose of EPACs is to strengthen the link between public participation and democratic governance, in support of three of USAID/Ukraine's rule of law strategic objectives.⁵

Lower level objectives listed in USAID workplans include: 1) provide legal advice and representation to citizens and NGOs on environmental issues, 2) train judges, lawyers, prosecutors, other government officials, and NGOs on Ukrainian environmental laws and international norms and standards, 3) produce and disseminate regularly Ukrainian and Russian language publications on environmental issues and citizens' exercise of environmental rights, 4) establish clinical legal education programs with local universities in order to train law students in the practice of environmental advocacy, and 5) promote the financial and institutional sustainability of the EPACs over the long term.

An EPAC is a program, operated and housed within an NGO such as Ecopravo, that employs an indigenous staff of environmental lawyers and other skilled professionals. EPAC/Ecopravo offices vary in physical design, but resemble law offices elsewhere in Ukraine, featuring several rooms with

⁵ While EPACs are included within USAID/Ukraine's Democracy and Governance framework, the outgoing director of USAID/Ukraine's Environmental Development division, who frequently visited the L'viv EPAC, hails the EPACs as an example of a results-oriented activity that successfully bridges two USAID programs.

desks, equipment, and other facilities spaced efficiently and shared commonly. On a daily basis, EPACs are active hubs: clients and colleagues flow in and out, communications via e-mail, fax, and phone are constant, production of legal casework is ongoing, and administrative staff stay busy. While all three Ukrainian EPACs share a common design and conduct similar work, they are at different stages of maturity, and the level of activity and independence varies among them. Kiev is still getting established while Lviv and Kharkiv are more developed and well-known.

Findings

1 Legal consultations and casework

A CEELI Case and Consultation Tracking Report⁶ shows that the three EPACs handled 46 legal consultations and nine legal cases in one recent 3-month period. All EPAC consultations and cases have been either resolved successfully or are being negotiated, according to CEELI and EPAC staff. None have been "lost." Consultations are loosely defined by CEELI staff as a single session, while cases are defined as "longer-term" consultations. All cases and consultations are handled by Ukrainian EPAC staff lawyers, with the assistance of law students and other EPAC staff. CEELI liaisons sometimes provide advice to EPAC staff on how to handle cases and consultations, especially if new legal principles are being argued.

EPACs have represented single citizens as well as groups. Ukrainian law does not provide for class actions, but an NGO as an entity is empowered to sue on behalf of a group of aggrieved citizens. Citizens who seek EPAC assistance do not pay for legal services, and those interviewed said that they had no other means to seek legal redress. "Only poor people live in bad environments: rich people can move or hire private lawyers," an EPAC lawyer said. Two clients in Lviv who successfully enjoined a developer from building on a historic park near their neighborhood stated emphatically that the EPAC lawyer was a diligent advocate on their behalf. Before meeting her they were like all Ukrainians, they said, distrustful of the legal process. "I am now not afraid to defend my rights," said one. A Kharkiv client who successfully fought a landfill with EPAC assistance said, "Ecopravo was indispensable to us."

When approached by aggrieved citizens, the EPAC strategy is to correct the problem with as little intervention as possible, according to EPAC lawyers and CEELI liaisons. A 3-step process of consultation, negotiation/settlement, and litigation is followed. Most cases are settled prior to litigation, although several have resulted in court cases, of those, several more are settled prior to judgment. In Ukraine's still somewhat closed legal system, limited intervention is often sufficient. EPAC lawyers might draft correspondence to a state office, make a phone call, or simply provide an explanation of rights. The Kharkiv EPAC, for example, notified the Ministry of Ecosafety (MOE) that a sewage treatment plant was in violation of a code, and the MOE subsequently fined the plant. In this way, EPACs often facilitate the process of legal enforcement that would otherwise not occur.

⁶ A recently developed reporting device, the Case and Consultation Tracking Report is prepared by CEELI with input from the three EPACs and submitted to USAID every 3 months. It is recognized by USAID as an excellent example of results-oriented monitoring and reporting.

since systematic monitoring of environmental compliance is still weak in Ukraine and citizens are mostly unaware of environmental rights or enforcement tools

EPAC cases that have gone to trial have helped establish precedent for the principle of public participation in decisions regarding local governance. Members of Ukraine's legal community believe that the impact of such victories reaches beyond the environmental sector to help strengthen broader rule of law doctrines in Ukraine.

"We are breaking the ice empowering citizens to assert their rights," said an EPAC lawyer. Another EPAC lawyer noted that even though corruption still exists in the enforcement of environmental rights (e.g., a city official could be bribed into signing a permit), there is now evidence that misguided or incorrect decisions can be reversed through legal measures. However, many Ukrainians still cited corruption as the biggest barrier to enforcement of legal environmental rights. One EPAC told the story of a group of citizens in the Chernobyl Region who refused to litigate because of the potential power of the violator.

2 Education and Training

Since enforcement is a weak link in environmental protection, CEELI has worked with the EPACs to educate MOE officials and environmental procurators, as well as other protectors of environmental rights, such as NGOs, lawyers, and judges.

An MOE official in L'viv who has attended two CEELI/EPAC seminars appreciated a lecture from CEELI liaison Anne Ziebarth on EPA procedures, and liked CEELI's interactive technique of using a real case and engaging participants in role-playing exercises. The Deputy Procurator of Environmental Enforcement for the L'viv Region said that as a result of a CEELI/EPAC seminar she sent suggestions to the Ukrainian Rada and to the MOE on weaknesses in environmental legislation.

In L'viv Region, administrative and criminal prosecutions of environmental offenders have increased by 100% in 2 years (from about 50 to over 100 cases). One procurator attributed this in part to EPAC educational efforts.

Potential environmental offenders have also been targeted by CEELI. A Ministry of Defense (MOD) official who attended a CEELI/EPAC workshop in Kiev for MOD and NGOs, featuring MOE and EPAC speakers, said that the workshop improved relations between the two groups, and increased MOD awareness of violations. "Many environmental problems are caused by the military," he said, "and we should be responsible." A workshop in Kharkiv for environmental compliance managers from large industrial enterprises attracted more than 30 participants. One said, "we liked Brian Rohan's presentation very much. We don't have any information on environmental management from other countries. Now we are able to see potential for the future."

EPACs have implemented many training activities and consultations for NGOs that have included advice on environmental rights as well as general counsel on NGO management and administration. The director of Greenpeace Ukraine said that they keep in close contact with the EPACs and rely on them for current information related to environmental legislation.

For most workshops and seminars, EPAC staff lawyers and other Ukrainian experts take the lead in facilitating the activities, CEELI provides substantive assistance in designing the agenda, organizational and financial support, and guest speakers (including liaisons and other U S experts) While many of the workshop materials are produced by Ukrainian lawyers and experts, and are printed at EPAC offices, CEELI liaisons provide additional information and materials from the United States that Ukrainians said they find useful

Workshop materials inspected in two EPAC offices cited ABA/CEELI as a sponsor, but did not mention USAID

The Kharkiv and L'viv EPACs have instituted a monitoring system for collecting feedback from workshop and seminar participants 4 to 6 months following an event, through telephone surveys The information is compiled and forwarded to CEELI in Kiev, where it is incorporated into an English-language report Examples of such reports were provided to the evaluation team Post-training questionnaires have been less effective in gathering feedback due to poor responsiveness, according to CEELI and EPAC staff

3 Information Dissemination

Citizens learn about EPACs through news publications, brochures, quarterly newsletters printed and distributed by each EPAC (L'viv has a circulation of 200), internet communication, and word of mouth Outreach has occurred almost naturally as word has spread among the environmental activist and legal community about the work of EPACs, attracting clients from as far as Odessa and Ivano-Frankivska

EPACs have produced formal publications also CEELI Liaison Stephen Stec, who co-founded the first EPAC with Ukrainian lawyer Svetlana Krevchenko, produced a Manual on Public Participation for Ukraine In 1996, the L'viv EPAC published a directory of environmental organizations in Ukraine CEELI publishes a regional newsletter, coordinating input from all three EPACs, that is distributed to approximately 500 individuals and NGOs

The EPACs also house legislative databases on the current status of all Ukrainian legislation, not just environmental laws This resource was cited by many Ukrainians, including judges, lawyers, law students, NGOs, and others as being invaluable, access to current legislative information is a serious problem in Ukraine, as noted in other sections of this report

A highly visible example of information dissemination is the collaborative effort of CEELI/EPACs and ARD/Checchi funded IREX, which produced a series of nationally televised videos documenting successful EPAC cases across the country Publicizing successful case outcomes contributes to public confidence in the legal process, said an ISAR representative

4 Clinics for Law Students

L'viv and Kharkiv EPACs have established clinics for law students through formal agreements with law schools, in which students receive credit for their practicum requirement (see V C *supra*)

Notably, in Kharkiv, 5 students from the Kharkiv State Legal Academy participate in the EPAC clinic on their own time since the dean of that law school refuses to cooperate with the EPAC's clinical program. The Kiev EPAC has negotiated an agreement with the private Solomon University and expects to begin its clinic program in the fall of 1998. EPAC lawyers who also work as law professors have helped forge such partnerships and typically manage the clinic as well. Students fulfill their practicum requirement by spending several hours per week at EPAC offices, working under the supervision of staff lawyers.⁷

A participating L'viv student said that the clinic program gives her an opportunity to work on real cases with practicing lawyers. She has engaged in investigative tasks, client consultations, legal drafting, and site inspections. Other students were not available to interview because they were away for the summer.

5 Policy Development

CEELI assistance in environmental legislative development is salient and serves as a potential model for other CEELI legislative assistance efforts (see V E *infra*). CEELI worked with members of the Rada on the Draft Law on Waste in 1997, suggesting language on public versus private waste that was included in final legislation. CEELI and the Kiev EPAC were also instrumental in organizing an open parliamentary hearing on the draft law, which was well-attended by the public and the media, reflecting a theme of public participation that has been evident throughout the EPAC program. CEELI also conducted an assessment of the Draft Concept on Sustainable Development, which was sent to the Green Party in the Rada, and is still under consideration.

Additionally, EPAC staff have participated on policy work groups established by the Ukraine-U.S. Council to Promote Sustainable Development, funded by the USAID Environmental Policy and Technology Project.

6 Regional and Cooperative Efforts

CEELI and the EPACs have been involved in many regional initiatives. Since 1994, the EPACs have sponsored an international conference of environmental advocates in Guta, Ukraine, which is now organized by the Environmental Law Association of CEE/NIS, but still paid for by CEELI. CEELI and EPAC staff have participated in many other regional conferences on NGO development and environmental issues. In 1997, CEELI liaisons and EPAC L'viv director Svetlana Krevchenko organized a session at a convention in Budapest on access to environmental information by the public. In 1998, L'viv staff lawyer Irina Tustanovska spoke on law school clinics at a Croatia conference.

⁷ Interestingly, similar clinical programs in the U.S. have recently been forced to close, according to a July 1998 National Public Radio report. The Supreme Court of Louisiana changed its rules on clinics after the business community claimed that two state law school clinics representing environmental claimants were operating against the state's interest in "economic development," and were propelled by the "political agenda" of law professors. The new rules will require clinic clients to meet strict poverty standards, even NGOs, which will have to disclose members' income.

The three EPACs are considering the creation of a regional Environmental Law Institute. The purpose of the institute would be to coordinate certain EPAC activities not involving legal casework, such as research and dissemination, lobbying, and training, and to attract other NGO members from the CEE and NIS region. Legal consultations and casework would continue to be implemented by individual EPACs. Since many international donors will not provide financial support for litigation, the EPACs believe that this division of responsibility is necessary in order to attract continued funding. CEELI is helping with the development of a charter and other organizational issues, but there is some debate between CEELI and the EPACs about whether to legally structure the institute as an international organization or as a Ukrainian NGO.

Once every 2 months, the 3 EPACs meet in Kiev to discuss EPAC substantive and organizational issues, including EPAC coordination and regional efforts.

7 Institutional and Management Issues

USAID commits a significant percentage of CEELI's Ukraine budget to the EPACs (about one-third in FY98), from which CEELI provides financial support and technical assistance to each EPAC. Although the Ecopravos were established NGOs prior to CEELI's involvement, EPAC funding now comprises between approximately 60 to 90% of total Ecopravo budgets. CEELI funds EPAC salaries, office costs, computer equipment, libraries and databases, publications, training activities, and other expenses.

Two CEELI environmental liaisons currently centrally manage the three EPACs from Kiev. One liaison oversees Kharkiv and regional efforts while the other oversees L'viv and Kiev EPACs. From 1994 to 1997, one liaison was assigned to oversee all EPAC activities, this position was filled by two liaisons serving successive terms. All environmental liaisons working in Ukraine to date, including two new liaisons starting in summer and fall, 1998, have had substantive environmental law experience, as do liaisons working with EPACs in Armenia and Moldova.

Assistance to the Ukrainian EPACs from CEELI liaisons and the CEELI Washington office is both technical and administrative. Different levels and types of assistance are provided to the three EPACs. The Kharkiv EPAC reported a high level of substantive input and contribution from their liaison, they praised his direct involvement and advice in legal cases and consultations—even going to villages to meet citizens. The L'viv EPAC reported less substantive involvement from their liaison, but also a strong interest in designing and implementing their own program. The Kiev EPAC, which is now established and starting to become active, stated that it receives good substantive input from its liaison on the development of agendas and activities. All three EPACs are dependent on CEELI staff for administrative and organizational assistance. Much CEELI time and effort is spent organizing seminars, arranging international and regional activities, facilitating approvals from Washington, and managing budgets.

Each EPAC employs 2-3 Ukrainian lawyers, an office manager, an accountant, and other staff, all of whom are supported in whole or part by CEELI funding. While each EPAC operates somewhat autonomously, all depend on monthly financial disbursements from the CEELI office in Kiev. Special events such as seminars and workshops are paid for on a case-by-case basis by CEELI liaisons who

carry additional cash to the EPAC when needed. Only the L'viv EPAC receives a CEELI Advocacy Grant, for that part of its budget allocated to staff salaries.

Division of responsibility on budget management was not clear. CEELI liaisons did not know exactly how much the annual EPAC budget is, and said that CEELI in Washington manages those issues. CEELI staff from Washington reported individual EPACs have not been able to manage their own budgets because budgets are interdependent, although with the planned transition to advocacy grants, EPACs will have more independence over financial management.

Other issues related to sustainability of the EPACs were probed. None of the EPACs are charging membership dues, training fees, or requesting matching contributions for any activities, although there is some evidence that participants would be willing to contribute. CEELI and EPAC staff cited restrictive NGO laws pertaining to taxation of commercial activity, but closer questioning revealed that current laws might allow NGOs to charge dues and fees, collect donations, and accept other in-kind contributions. It is clear that they would be prohibited from charging for legal services, considered to be commercial activity under NGO law. EPAC staff said that they write grant proposals to secure additional funding, but the extent to which CEELI is assisting in this effort is unclear.

None of the EPACs have boards of directors, possibly because the concept of boards of directors is new in Ukrainian law. The director of one of the EPACs pointed out that recent legislation on charitable foundations allows for the creation of a board of directors.

In sum, the EPACs face institutional challenges that CEELI staff acknowledge and for which they are formulating solutions. In addition to increasing the use of advocacy grants to support independence and self-sufficiency of the EPACs, CEELI is planning to place a Regional Institution Advisor in Kyiv in 1999, and that expert will be working with the EPACs on institutional issues.

In general, the EPACs stated continued demand for American environmental experts for training sessions, expertise in the development and implementation of law school clinic programs, and links to U.S. sources of information and research.

Conclusions

1. Objectives are mostly being met. CEELI has demonstrated that the EPAC model is highly successful at facilitating the link between public participation and democratic processes. Due directly to EPAC efforts, citizen awareness has increased, giving individuals and NGOs a greater sense of empowerment for asserting legal rights. This strengthened civic society generates greater public participation in democratic processes by forcing decisionmakers to be more accountable. Lower level objectives are met through successful legal casework, training and education, law school clinics, legislative assistance, information dissemination, and regional initiatives. Weaknesses appear in aspects of administration and sustainability, including a cumbersome budget process and the absence of a clear exit strategy, although other aspects of sustainability are encouraging, such as the strong indigenous composition of EPAC implementers.

2 Objectives are appropriate EPACs are simultaneously addressing two national dilemmas serious environmental problems and fragile rule of law institutions A strong but struggling environmental NGO co-designed the EPAC model, the demand among citizens for the advocacy centers is unlimited, and there is movement at the national level for reform of environmental legislation

3 Impacts are impressive Citizens and NGOs are more empowered to assert their rights and thus are more legitimate participants in the development of rule of law, cases are being resolved successfully and precedents are being set, environmental legislation is being enacted with public participation in the policy process, potential environmental offenders from the public and private sector are learning about their responsibilities and gaining accountability, information is being disseminated nationally, and students are learning practical skills through accredited legal clinics Impacts and results are being effectively monitored and captured by CEELI through new reporting devices that could be used as models for other CEELI programs

4 Sustainability is questionable While the EPACs are in some ways independent, in other ways they are wholly dependent EPAC staffs are comprised of some of the best environmental lawyers in the country who are skilled counselors, professors, and litigators, and are more knowledgeable than CEELI experts on Ukrainian law However, the EPACs are completely dependent on CEELI funding and CEELI administrative procedures, they have virtually no budgetary autonomy and thus are not learning the organizational skills they will need to sustain their organizations EPACs are not implementing cost-sharing measures, and appear to have no strategy for survival beyond CEELI funding To CEELI's credit, it recognizes these institutional challenges and is taking active measures to address them

Recommendations

1 Based on Ukraine's successful model, CEELI and USAID should expand EPACs to additional cities and other countries, and support a long-term approach for regional coordination of the EPACs

2 CEELI should conduct an assessment of the technical needs of the EPACs, and target assistance accordingly This exercise could engage each EPAC in a discussion of what form of expertise is most needed, such as specialized U S environmental experts, experts in clinical programs, access to research materials, etc In this way, CEELI would optimize substantive input

3 To minimize administrative input, CEELI should work with EPACs to help them become more sustainable As a starting point, CEELI should consider giving each EPAC an Advocacy Grant rather than monthly and ad hoc cash disbursements, and hold EPACs accountable for standards in their grant agreements CEELI could work with the EPACs to help them build institutional stability by developing aspects of management systems, such as in-house workshop organization, records automation, fee schedules, dues, financial planning, employment taxation, etc A review of NGO laws should be conducted to ascertain current restrictions and opportunities CEELI should also take a more active role in assisting the EPACs with leveraging funds from other sources, through grant-writing and other fundraising efforts Seminars could be conducted on such issues As part of the sustainability effort, CEELI should devise an exit strategy for each EPAC, depending on its level of maturity

5.5 Legislative Assistance

Background

Objectives

Legislative assistance in the form of expert assessments of draft laws and concept papers on prospective legislation is part of the general menu of services offered by ABA/CEELI headquarters in Washington, D C in conjunction with local liaisons

The February 1, 1995 ABA/CEELI workplan for Ukraine refers to drafting assistance with respect to the country's Draft Criminal Code, the August 1, 1997 document just refers to legislative assessments being available to "representatives of the Council of Advisors to the Parliament and others " Under IR 2.2.2.1, the workplans starting August 1, 1996 expressly mention advice on the drafting of laws regarding the legal profession and codes of lawyer ethics

Context

The legislative process in Ukraine has been tortuously ineffective Many important pieces of legislation, including the Civil Code, the Criminal Code, the Law on the Judiciary and legislation on the legal profession(s), have still to be passed At present, the Supreme Rada's inability to elect a Speaker has had the entire process of legislation come to a halt

Findings

As of the date of this team's visit, ABA/CEELI has returned 12 assessments of draft laws, seven of which were submitted to the team for review in Washington, D C

The quality of CEELI legal assessment papers has improved greatly The first assessment reviewed, the comments on the 1992 Draft Law Concerning the Procuratura, suffered from the lack of familiarity by some of the commentators with the institution of the procuracy, compared to, for example, the comparative focus and thoughtful analysis contained in the 1996 assessment of a draft Georgia Law on the Office of Public Prosecutors There was also a relatively poor synthesis of rather thin comments by U S experts on the 1993 draft law on legal regulatory acts, the synthesis of the comments, by U S experts only, on the Draft Criminal Code, could also have been better organized In contrast, the scholarly comments on the 1992 draft constitution, especially some on the independence of judges, are impressive both in depth of analysis and comparative perspective Excellent comments were synthesized well in the assessment of the separation of powers provisions of the 1996 Draft Constitution, a proper selection of academic, federal judges, and Congressional staff experts provided most helpful advice and comparative perspective ABA/CEELI also submitted an appropriately critical analysis of the draft Code of Professional Ethics of the Association of Practicing Attorneys, referring not only to the ABA Model Rules of Professional Conduct, but to the relevant EC Rules as well ABA/CEELI is presently assessing a Draft Canon of Ethics of the Union of Advocates of Ukraine

The President of the Association of Practicing Attorneys has considered CEELI's assessment of its Draft Code of Ethics "quite useful " He also stated that CEELI's comments took into account "some special features of the Ukrainian context " Many copies of that assessment were made and sent to the local chapters for review At its meeting in September/October 1998, the organization will discuss the Draft Code together with the assessment with a view to adopting a final document

In January, 1998, the Kiev EPAC organized an Open Parliamentary Hearing on the Draft Law of Waste in cooperation with the Head of the Secretariat to the Environmental Committee of the Supreme Rada and the Parliamentary Development Project Several environmental NGOs, members of the Supreme Rada's Environmental Committee and representatives of the Ministry of Environmental Protection and Nuclear Safety participated in the hearing Ultimately, this process led to important changes in the final version of the law, including a redefinition of public versus private waste

CEELI's assessment of a Draft Concept on Sustainable Development will be discussed at an Open Parliamentary Hearing originally scheduled for late June, 1998

Conclusions

- 1 In terms of quantity, assessments of draft legislation have been a minor part of CEELI's program in Ukraine To the extent legislative assistance was formulated as an objective in CEELI's workplans, it has been met
- 2 The quality of the assessments, overall, has been uneven More recently, there have been definite improvements in the level of sophistication, the comparative reach of analysis, and the responsiveness to salient features of the local context
- 3 The impact of formal assessment papers on the legislative process, slow and ineffective as it is, and, in particular, on actual laws passed, has been, to say the least, not well documented CEELI, however, had some measurable impact occurred when an entity supported by it, the Kiev EPAC, organized informal hearings with legislators and NGOs regarding the law on waste Similar impact might issue from CEELI's formal assessment of the Draft Concept on Sustainable Development
- 4 The legal professionals' organizations requesting assessments of their draft canons of ethics eagerly awaited, and will discuss seriously, CEELI's comments, they have developed a continuing dialogue with the organization

Recommendations

- 1 Legislative assessments should, in principle, be integral parts of the organization's country-specific, programmatic focus In those areas, it should be pro-active, arising from, and being part of, a process of continuing interaction and dialogue with key legislators, governmental officials, and NGOs One example would be the cooperation of EPACs with legislators and other NGOs in drafting the law on waste and the concept on sustainable development, another one the continuing dialogue with lawyers' organizations on canons of professional ethics If other focuses develop, e g

one on issues of gender, similar legislative agendas might be seamless parts of that integrated approach

2 CEELI should consider offering assistance in the mechanics of drafting legislation, the organization of statutes, etc to professional staff of the legislative assemblies of Ukraine It should consider offering respective workshops, and materials of general interest regarding such drafting advice should be widely disseminated

3 CEELI should expressly condition its rendering of advice on draft legislation on the receipt of feedback from the requesting organization and/or individual regarding the use made of the assessment and the ultimate resulting legislation, if any, in the field

This country report focuses on program evaluation results Although the team collected data on CEELI's organizational and management structure and performance in each country, these data have been reserved for inclusion in the final program report

DRAFT

**The American Bar Association/Central and
East European Law Initiative (ABA/CEELI)**

**Evaluation
Georgia Country Report**

DRAFT

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	11
1 0 BACKGROUND	1
2 0 ABA/CEELI IN GEORGIA	3
3 0 OBJECTIVES AND AGREEMENTS	4
4 0 RULE OF LAW CONTEXT	5
5 0 PROGRAM ELEMENTS	6

EXECUTIVE SUMMARY

The evaluation of the USAID funded ABA/CEELI Rule of Law program in Georgia was conducted by an expert team from July 1 to July 9, 1998 based on an extensive Scope of Work prepared by USAID with input from ABA/CEELI. This report is part of a series of country evaluations which will be synthesized in a final program evaluation report submitted to USAID in January 1999.

The SOW directs the evaluation to address four main issues: whether 1) objectives were met, 2) objectives were appropriate, 3) there was observable impact, and 4) the impact was sustainable. In addition, the SOW requires the team to address the effectiveness of the program's institutional development efforts, and a number of organization and management questions regarding the strengths and weaknesses of the unique ABA/CEELI reliance on volunteers to provide technical assistance. The Country Report presents tentative findings, conclusions and recommendations for each program element. The final report, which covers all 22 countries where CEELI works, addresses organizational and management issues as well.

This Executive Summary will present an overview of impact, followed by main conclusions and recommendations for each program element.

Overview of Impact

Georgia is a small country of 5 million people that has suffered from regional strife and civil unrest since its independence was won in 1991. Despite political instability, economic hardship, and a dogged tradition of corruption, Georgia has distinguished itself among NIS countries for its progress in rule of law reform.

CEELI is one of many assistance providers assigned to help Georgia with this task. CEELI stands out among this group for the strength and effectiveness of its partnerships with key Georgian reformers in the Parliament, the Constitutional Court, the Supreme Court, the Council of Justice, the Judicial Training Center, lawyers' associations, law schools, and other organizations.

In the two-and-a-half years that CEELI has worked in Georgia, it has produced positive results. Impact to date includes:

- The first judicial qualifying examination of its kind in the NIS has been administered in a fully fair and transparent manner, leading to a more credible and independent judiciary,
- Public confidence in legal systems has increased,
- An independent Judicial Training Center has been established, modeled in part on the CEELI JTC in Latvia,
- Professional capabilities of the Constitutional Court, the Supreme Court, other judges and legal professionals have been enhanced,
- The mass media in Georgia has made impressive strides towards becoming a free and independent institution, and more knowledgeable of legal systems,
- The Georgian Young Lawyers Association has been strengthened,
- Progress has been made in reforming legal education,

- The legal association NGO Article 42, aimed at protecting constitutional human rights, has been established and strengthened, and
Policy reform in rule of law has been aided by CEELI legislative assistance efforts

Trademark CEELI assets that cross-cut these accomplishments include 1) the drive and commitment of Tbilisi-based liaisons, 2) the quality and relevance of CEELI legal expertise, from liaisons and short-term specialists, 3) the initiative to forge partnerships with key Georgian reformers, and 4) the initiative to reach beyond the capital and into the regions, when possible

Program Elements

A Judicial Reform

Conclusions

CEELI has been instrumental in the development of a judiciary for Georgia that will be more empowered to impart justice in an ethical manner, without state influence or corruption. Through assistance in legislative development, administration of a qualifying exam that should be used as a model in other NIS countries, well-designed and valuable workshops, seminars, and study tours, support for establishment of an independent Judicial Training Center, and “roll-up-your-sleeves” technical assistance, CEELI has gained the respect and trust of key Georgian reformers who consider CEELI a partner in Rule of Law reform.

Recommendations

Continue support to the Council of Justice in the administration of judicial qualifying examinations and other tasks aimed at developing an independent judiciary, continue to utilize the expertise of U.S. lawyers and CEELI liaisons for tailored workshops, seminars, and study tours, continue to support the Judicial Training Center, especially with training of trainer needs.

B Assistance to the Constitutional Court

Conclusions

CEELI has enhanced the professional capabilities of the Constitutional Court, through rendering of advice, provision of experts, and highly effective study tours to the United States. Liaisons have established a trusting relationship with members of the Court, and have helped increase awareness of constitutional rights through support to the media, moot court competitions, and information dissemination. Impact from CEELI assistance to the Court has been sustainable, as it has been incorporated into the Court’s permanent organization.

Recommendations

Continue assistance to the Court, provide U.S. experts and study tours as needed to address the specific needs of the Court, continue efforts to educate the public about the role of the court and about constitutional protections, select liaisons for Georgia who can continue the tradition of forging effective partnerships with elite members of Georgia’s legal and judicial professions.

C Bar Development and Continuing Legal Education

Conclusions

CEELI has helped strengthen the Georgia Young Lawyers Association (GYLA), particularly in the provision of library and on-line services that have allowed GYLA to provide free legal advice to the public. Strong professional relationships with GYLA leaders and members has enabled CEELI's efforts to enhance the association. Efforts to regionalize GYLA operations have been intensified and are significant given ongoing regional strife and logistical obstacles to travel.

While CLE has been introduced, it needs methodological guidance. Efforts to encourage lawyers to challenge the power of the state have been successful, as illustrated by the NGO Article 42.

Recommendations

CEELI should assist Georgia, if desired, in the development of legislation that would strengthen and validate the institution of the bar, through qualifying standards and provisions for an independent national bar. Absent this goal, CEELI should continue to help empower the GYLA as a voluntary association whose membership should be perceived by the public as a seal of trust, through enhancement of the association's own standards.

D Legal Education

Conclusions

CEELI has met limited objectives, by establishing contact with key legal educators, including deans and professors, but deeply seeded barriers to legal education reform remain, such as systemic corruption.

Recommendations

If appropriate, CEELI could assist Georgian leaders in a discussion on the development of a regulatory framework for legal education. CEELI has access to U.S. experts who could assist in this initiative, and workshops could be organized that introduce the American law school model into the Georgian context.

CEELI should assist, if desired, in the task of reforming select legal institutions, through utilization of visiting American law professors with assistance from "sister" American law schools. An alternative but less effective approach could be to send Georgian professors to the US for short courses on the American model of teaching.

E Media and Law

Conclusions

CEELI has contributed significantly to a strengthened media through efforts to educate journalists on aspects of judicial reform and the role of the media. CEELI has collaborated with a group of

international organizations to launch and sustain a campaign for the implementation of a Law on Mass Media in Georgia that has gained the support of a broad and powerful coalition. Public confidence in government actions has increased due to the development of a more free and independent press, due in large part to CEELI's dynamic work in this field.

Recommendations

CEELI should continue to assist in the enactment of media legislation, and should continue to produce well-received and highly effective workshops and seminars for members of the media on aspects of rule of law reform, as well as topics related to the rights and role of the media.

F NGO Article 42

Conclusions

CEELI has successfully launched Article 42, an NGO of young lawyers dedicated to enforcing Article 42 of the constitution, which protects human rights, particularly rights of the criminally accused. CEELI has assisted the new NGO in establishing sustainable mechanisms for its long-term support, including organizational structures and fund-raising strategies. The NGO clearly supports appropriate objectives, as the new constitution, the new Criminal Procedure Code, and the Procurator Code all further authority for the protection of human rights.

Recommendations

CEELI should continue to provide modest financial support and assistance with program and organizational development to NGO 42, since it could become a positive model in Georgia for the advancement of professionalism and legal service to the community.

G Legislative Assistance

Conclusions

CEELI has met objectives by responding in a timely manner to requests for legislative assistance with mostly high quality and useful appraisals, and should be commended for extending the scope of its objectives by remaining actively engaged in the legislative process. Impact from CEELI's assistance has been remarkable and well-documented, resulting in improvements in the judiciary, the procuracy, the media, and the process of criminal justice.

Recommendations

CEELI should continue its involvement with the legislative process, in response to the needs of Georgians. CEELI involvement should continue to focus on a comprehensive approach through which it remains engaged from the inception of legislation to its implementation. CEELI should retain its programmatic focus on reform of the legal infrastructure.

10 BACKGROUND

This evaluation of the American Bar Association/Central and East European Law Initiative's (ABA/CEELI) Rule of Law program in Georgia is part of a larger program evaluation of all CEELI programs in Central and Eastern Europe and the Newly Independent States (NIS). The evaluation was commissioned by the United States Agency for International Development's Office of Democracy, Governance and Social Reform in the Bureau for Europe and the Newly Independent States (ENI). An extensive Scope of Work (SOW) was prepared by USAID with input from ABA/CEELI. The SOW sets out detailed questions to be answered, and issues to be investigated. USAID and CEELI also reached written agreement on how the evaluation would be conducted, including an agreement that an ABA/CEELI Washington staff person would observe and participate as appropriate in all interviews and discussions with CEELI personnel conducted by the evaluation team.

The evaluation was conducted by a Management Systems International (MSI) team made up of a senior development evaluation specialist, an attorney with rule of law development experience, and an European-educated law professor/legal expert with experience in U.S. and European law and legal education systems.

The evaluation began in Washington, D.C. on June 3, 1998 with extensive briefings from ABA/CEELI, USAID, meetings with other informed professionals, and an assembly and review of program planning and reporting documents submitted by ABA/CEELI and USAID. Field visits to nine countries began with Russia on June 15. The field visits will occur in two phases. Phase I included Russia, Ukraine and Georgia. Before departing, the evaluation team provided the USAID Missions and ABA/CEELI with interim oral reports, to be followed by written country reports. Upon completion of all field visits in September-October, 1998, the team will submit a summary evaluation report.

USAID's purpose in commissioning this comprehensive evaluation is to determine: 1) the extent to which ABA/CEELI has achieved the USAID grant objectives, as well as Strategic Objectives and Intermediate Results, 2) whether those objectives were appropriate, 3) the sustainability of achievements, 4) to advance the reasons for success or failure, and 5) to receive the evaluation team's recommendations on how best to shape the relationship between USAID and CEELI in the future.

The methodology used by the team is standard for USAID evaluations, including document review, interviews with field-based implementors, USAID, US Embassy staff, and host country participants and beneficiaries of the assistance program. Field logistical support and interview appointments and schedules were prepared by CEELI field offices. USAID field mission input to the interview schedule was sought by the evaluation team to ensure that the diverse views and experiences with the CEELI program would be ascertained.

During the team's visit to Georgia July 1 through July 9, it received extensive briefings from ABA/CEELI Liaison Barbara Swann, Associate Liaison Theodore Curtin, accompanied by CEELI consultant Mark Dietrich. Assisted by ABA/CEELI Georgian program officers/translators Tamuna Chegoleishvili, Irina Lortkipanidze and Maia Chochua, the team interviewed 2 USAID officers, the US Embassy Political Officer, the USIS Officer, more than 45 Georgians, three Europeans, and three

Americans The Europeans and Americans interviewed are with organizations which have been involved with CEELI programs over the past two years

In Tbilisi the team met with leaders of the Constitutional Court, the Supreme Court of Georgia, the Council of Justice, the Director of Judicial Training, and faculty from Tbilisi State Law School International and local NGOs interviewed include the Open Society Georgia Foundation, Internews-Georgia, the National Democratic Institute, the Georgian Young Lawyers Association, and Article 42, Fundamental Human Rights Center

Two members of the team traveled to Kutaisi, about five hours from Tbilisi, to meet with the Kutaisi branch of the Georgian Young Lawyers Association

Unfortunately, efforts to reach USAID project officers Carol Horning and Melissa Schwartz by telephone who were either on leave or had left USAID were not successful prior to the preparation of this report

The team worked with CEELI Tbilisi to generate data on CEELI programs in formats not normally used by CEELI for activity reporting

The team considered using systematic data collection techniques, including mailed questionnaires, telephone interviews, and structured focus groups in provincial cities In the end, local reports of low response rates, distrust of telephones, as well as insufficient budget limited the teams' data collection choices to rapid appraisal techniques commonly used in USAID evaluations

20 ABA/CEELI IN GEORGIA

ABA/CEELI's Georgia program is two and a half years old. The first liaison arrived February 1996, serving until June, 1997.⁸ The second and third liaisons arrived September and October 1997. Three legal specialists have provided short term assistance to law association development and to the major judicial examination project. The second liaison, Ms. Barbara Swann, will depart in fall, 1998. Mr. Theodore Curtin, the third liaison, will remain for a second year. A replacement for Ms. Swann has been recruited and will begin in September 1998.

Three Georgians serve as program officers and interpreters. The senior member of this group will graduate soon from Tbilisi State Law Academy and is applying for advanced legal education in the United States. As rising young legal professionals, the contribution of the Georgian staff goes beyond interpreters, but also includes written translation of laws, and other materials, logistical support and office management.

⁸ Robert LaMont had agreed with CEELI to serve a second year, but early in his second year accepted an offer from a US for profit rule of law USAID vendor in Georgia. Mr. LaMont agreed to continue to coordinate the ABA/CEELI program until a new liaison could be recruited and put in place.

3.0 OBJECTIVES AND AGREEMENTS

USAID's Strategic Objective (S O) 2 2, "Legal systems that better support democratic processes and market reforms," currently guides all of ABA/CEELI's work in Georgia, as in most other NIS countries. A secondary but important S O is 2 1, "Increased, better-informed citizens' participation in political and economic decision-making."

Intermediate Results (IR) under S O 2 2 that further guide ABA/CEELI's Georgia program, as delineated in workplans, include

- IR 2 2 1 "Enactment of effective and fair laws,"
- IR 2 2 2 "Increased respect for the legal system,"
- IR 2 2 3 "Independence of the judiciary," and
- IR 2 2 3 1 "Improved legal education "

Specific goals or "projects" detailed in ABA/CEELI's cooperative agreement and workplans have been fairly consistent from the beginning of its Georgia program in 1996. They include

- 7) Strengthen indigenous professional legal associations and develop indigenous continuing legal education programs,
- 8) Assist in legislative drafting on issues affecting rule of law in a democratic society,
- 9) Participate in the improvement of legal education,
- 10) Support the development of an independent judiciary,
- 11) Work with the Georgian judiciary on recertification and training of Georgian judges,
- 12) Work with Article 42, and other Georgian NGO "watchdog" organizations, and
- 13) Coordinate with other donors to provide economies of scale and avoid duplication

40 RULE OF LAW CONTEXT

Georgia is a small country of about 5 million people. At least five ethnic groups co-exist in 53 rayons, 9 cities, and 2 autonomous republics. Georgia's unique history, ethnicity, language, script, and open Southern culture made it an uneasy part of the Soviet Union. Significantly, Georgia declared its independence in April, 1991, four months before the formal demise of the Soviet Union. Since independence, the country has been plagued by ethnic and civil strife. Although separatist conflicts in Abkhazia and South Ossetia have been dormant since 1994, political settlements remain elusive, and about 250,000 people are still displaced.

Edward Shevardnadze, a former Foreign Minister of the Soviet Union, has been the elected President of Georgia since November 1995. Shevardnadze came to power with the assistance of friends from Soviet times, many of whom he has retained in influential positions. However, he has also surrounded himself with many young advisors and legislators educated in the United States and committed to change. Together, these groups form a fragile coalition in his support.

Georgia has distinguished itself in many ways from other formerly Communist states. Even in the face of instability, its quest for reform is palpable. One could speculate on the causes — the youth, commitment, and educational traits of its leaders, its historical allegiance to Western sympathizers to help guard it from powerful neighbors, a flood of donor assistance and thus intense exposure to Western influences — but one would be hard-pressed to deny the results.

Shevardnadze's coalition has tackled old institutions one by one. It has adopted a new, some say overly progressive, constitution. It established a Constitutional Court. It keeps enacting legislation that other NIS reformers envy (200 laws passed in 2 years). Governmental branches have been separated, and autonomous bodies built. In just a few years, Georgia has made progress in constructing a rule of law society. But much work remains. New doctrines must be installed and implemented, and old habits broken. Widespread corruption still impairs rule of law institutions, including the judiciary, law schools, and the legal profession. In short, there are plenty of good reasons for Georgians to continue their tradition of seeking assistance, and plenty of good reasons for the international community to continue to offer dialogue and support to Georgia.

Although their legal system is based primarily on civil law, Georgians are clearly open to a potpourri of ideas and influences. USAID is one of more than 30 international organizations that is active in Georgia. And ABA/CEELI is one of several assistance providers tasked with helping Georgians institute rule of law. CEELI's success in Georgia is due to many factors, but has been largely aided by its close professional partnerships with reform-minded leaders. Unlike some of its larger NIS neighbors, Georgia gives CEELI the opportunity to work at the core of national reform, where power is concentrated and where progress has proven to be possible.

5 0 PROGRAM ELEMENTS

5 1 Judicial Reform

Background

On the emergence of rule of law, Thomas Carothers has written

“Rewriting constitutions, laws, and regulations is the easy part. Far-reaching institutional reform, also necessary, is arduous and slow. Judges, lawyers, and bureaucrats must be retrained, and fixtures like court systems, police forces, and prisons must be restructured.”⁹

If rule of law is viewed as a process, or a scale of reform, with new doctrines on one end, and reliable institutions on the other, Georgia gets credit for moving beyond the “easy” milestones. Judicial reform, as a fundamental ingredient in rule of law, has been a visible priority for Shevardnadze’s government. Comprehensive legislation has been passed, a tripartite Council of Justice and an independent Judicial Training Center have been established, a model system for qualifying judges has been designed and is being administered, the mass media has been encouraged to participate, and a new Constitutional Court is active.

During ABA/CEELI’s short tenure in Georgia, featuring three liaisons and a handful of legal experts, it has worked with Georgians at every stage toward an independent judiciary. Through workshops, seminars, U.S. study tours, European study tours, and daily technical assistance, CEELI has become one of the key partners in Georgia’s judicial reform effort.

Objectives

Workplans dating back to 1996 task CEELI with supporting the development of an independent judiciary, now formalized as Intermediate Result 2.2.3. Workplans covering the period November 1997 through October 1998 define long-term goals as “To develop a court system and judiciary that enforce constitutional protections and legislation in an impartial, consistent, and ethical manner, without state influence or corruption.” Short-term goals include continued training and technical assistance to the Council of Justice and the Ministry of Justice, as well as to work with the “Independent Judicial Training Center of Georgia” by providing training to the judiciary and by responding to other requests.”

CEELI’s own summary of its judicial reform objectives and accomplishments, applicable to its program as a whole and citing no country in particular, states in part

“In the broadest sense, CEELI’s judicial reform work is aimed at helping develop local institutions that can themselves work to obtain those ‘prerequisites’ to an independent judiciary identified in the *United Nations Principles on the Independence of the Judiciary*. CEELI has focused primarily on helping develop institutions or programs that will

⁹ Thomas Carothers, “The Rule of Law Revival,” *Foreign Affairs*, vol. 77, March/April 1998, pp. 95-106.

increase the skill and competence of judges, as well as those through which local judges will be empowered to take greater control of their judiciaries, and of judicial reforms”¹⁰

This section on Judicial Reform is divided into two programmatic components 1) Council of Justice assistance/judicial qualifying examinations and 2)Judicial training The discussion on programmatic components is introduced by an overview of testimonial findings on the impact of CEELI’s assistance in judicial reform

Assistance to the Constitutional Court is presented separately, in the section that follows, V B

Findings

1 Overview of Testimony on Judicial Reform

Georgians interviewed for this evaluation included chairmen and members of the Supreme and Constitutional Courts, members of the Council of Justice, Parliamentarians, advocates, and others The following statements are representative quotes from stakeholders regarding CEELI’s assistance in Judicial Reform

- “ABA/CEELI has become an irrevocable part of the legal system in Georgia ”
- “They organize all the other donors ”
- “Programs with much more funding are much less effective ”
- “ABA/CEELI knows all the right people in town and has developed partnerships with the key Georgian reformers ”
- “Liaisons are enthusiastic, young, good networkers ”
- “ABA/CEELI is the most flexible and responsive organization I ever met Others write analytical papers that are irrelevant, and we don’t bother to read them ”
- “They are a rapid deployment process, if you need something in 2 weeks, they identify the right expert and respond quickly ”
- “Their seminars and workshops are very appropriate They have more experience in training and they always bring qualified experts here ”
- “They don’t try to force the American perspective on Georgians ”
- “ABA is out there in the regions they spot the unanticipated needs ”

¹⁰ ‘Description of ABA/CEELI Judicial Reform Activities “ (1998) CEELI has developed a draft Judicial Independence Survey that incorporates the United Nations’ principles as well as other international standards used to measure the independence of a judiciary While the survey has not yet been used in Georgia, CEELI plans to test it in an NIS country later this year, and then modify it appropriately

2 The Council of Justice/Judicial Qualifying Exam

Georgians, as well as expatriates working in Georgia, agree that CEELI's most significant contribution to date has been assistance in the design, development, and introduction of judicial qualifying exams, the first of their kind in any NIS country. CEELI Liaison Barbara Swann, in particular, was repeatedly credited by Georgians for being critical to the success of the exam process.

Yet the exams, while internationally recognized, are just one milestone in the pursuit of judicial reform. The seeds of CEELI's participation in this broader initiative go back 3 years, to the new constitution.

Georgia's 1995 constitution, which was first translated by CEELI, declared that Georgia would have an independent judiciary and envisaged a system of general courts "determined by law."¹¹ To this end, a Law on Courts of Common Jurisdiction was drafted in 1996. A CEELI assessment that was considered by a parliamentarian to be "instrumental in securing an independent judiciary" recommended, *inter alia*, that Ministry of Justice control over the judiciary be minimized.¹² The comprehensive legislation, which incorporated CEELI's recommendation, set the stage for massive judicial reform by delineating the structure and authority of all courts in Georgia.

The law also codified the idea of one of Georgia's most powerful young leaders by requiring the creation of a Council of Justice (COJ) charged with overseeing the judiciary. A presidential advisory board composed of 4 members each from the Executive, Judicial, and Parliamentary branches,¹³ the COJ is specifically tasked with "working out the proposals for implementation of judicial reform, selection of nominees for the position of judge, their nomination, dismissal of judges, organization of qualifying exams."¹⁴ The goal of the COJ, according to one member, is "to support integrity and transparency of the examination and evaluation process and to provide the judiciary with highly professional judges selected fairly and objectively." Said another COJ member, "corruption and impartiality are key problems in the judiciary; no government structure is immune, so we were dedicated to making this selection process completely transparent."

"Provisions for the Competition of Judges," a detailed set of rules and procedures for judicial selection, was developed soon after creation of the COJ in 1997, and issued by Presidential Decree. Georgian citizens can apply to be judicial candidates and sit for the exam if they are lawyers, over the age of 30, have at least 5 years of professional experience, and are fluent in the language of Georgia. The exam is intended to consist of two phases: a written multiple choice test, and a more subjective character and fitness test designed to resemble the licensing process of attorneys by U.S. bar associations. The second phase of the exam has not yet been developed.

¹¹ Georgia Const. art 82, 83

¹² The American Bar Association Central and East European Law Initiative (CEELI), "Analysis of the Draft Law on Common Courts for the Republic of Georgia," Oct., 1996, at 8.

¹³ Notably, CEELI proposed a structure for the COJ that gave less authority to the Executive, but most Georgians said that the current composition and procedures have worked well so far, although they acknowledge that the COJ is still young and has not been fully tested. At least one Georgian, a member of a high court, stated the preference for more representation on the COJ by members of the judiciary.

¹⁴ Organic Law of Georgia on Courts of General Jurisdiction, Article 60, 1997.

By law, all sitting judges must take the first phase of the exam by the end of 1998, with the exception of Constitutional Court judges, who are exempt until 1999. The first exams were scheduled for May 1998, and the second round is scheduled for October 1998. New candidates as well as sitting judges were given the opportunity to attend training sponsored by the Ministry of Justice, with COJ and CEELI support, in preparation for the May exams (see Judicial Training section, below, for discussion of future training by the newly created Judicial Training Center).

Of 372 sitting judges, 200 refused to take the May exam. Their objection, as pronounced by the Association of Judges, was that sitting judges should have an opportunity to complete their 10-year constitutional appointments, which end in 2001, before being tested. A member of the COJ supports this view, arguing that the 2-year period remaining in their term could have been used to provide intensive training in preparation for the qualifying exams. Supporters of the existing schedule claim that excuses could delay the process indefinitely, and reform is already long overdue.

CEELI's assistance to the COJ in the preparation and administration of the qualifying exams has been intensive, by all accounts. The COJ member responsible for administering the exams said, "The exam was our idea, but it would have been impossible without ABA/CEELI." CEELI Liaison Barbara Swann is singled out by Georgians for her work with the COJ. "She coordinated all of the Europeans, and made sure that everything was done professionally," said a COJ member. Other CEELI experts named for their contribution include Jean Gaskill and Maureen O'Leary, both of whom provided short-term technical assistance on the administration of the examinations.

CEELI's assistance included the following:

- Provided technical assistance in creating the mechanics of drafting substantive questions for the judicial qualification exam and in devising testing methodologies and standards and procedures for administering the exam.
- Provided technical assistance and advice in formulating security procedures to ensure the integrity of the examination process.
- Coordinated with the COJ to have the exams finalized and printed in the U.S. by CEELI, brought COJ members to California to participate in the process, and coordinated with the German Embassy to have the printed exams transported as diplomatic cargo from the U.S. to Georgia, ensuring their security.
- Advised the COJ to create a multilateral assistance monitoring group to oversee all aspects of the administration and anonymous grading of the judicial qualification exam, provided oversight of multi-lateral coordination efforts.
- Advised the Council of Justice to allow Georgian mass media to observe all aspects of the administration and anonymous grading of the judicial qualification exam.
- Advised the COJ to administer the same exam on the same day in Tbilisi and Batumi, in order to ensure equal treatment of all judges and candidates throughout Georgia.
- Provided the COJ with a grant to purchase computer scanning and other equipment essential for fair administration of the exam.

In May, the first exams were administered as scheduled, simultaneously in Tbilisi and Batumi, to approximately 300 candidates, of whom 45 passed. CEELI staff were present in both cities to observe administration of the exams. Other observers included members of the mass media, members of the Association of Judges who opposed the exam, and international monitors. Georgians, even those who opposed or failed the exam, unanimously agree that the exam was fair and the process was transparent. According to Georgian members of the media and officials involved in the testing, no one has challenged the exam process or results.

The evaluation team facilitated a roundtable with approximately 10 judges who took the May 1998 exam, not all of whom passed. A clear consensus was expressed on the highly professional procedures followed in the administration of the exam, the fairness of the exam questions, and the transparency of the process overall. Several judges on this panel had attended CEELI-sponsored training events, either in preparation for the exams or on issues of general importance to the judiciary. All rated the impact from CEELI activities as a 10 on a scale of one to ten.

Georgians report a sense of accomplishment gained from the first round of exams, and a greater degree of confidence in the judicial system. "Given the initial resistance to judicial reform, remarkable progress has been made," said a COJ member. The editor of a leading independent newspaper in Tbilisi who attended the administration of the first exam said, "This is a big step for Georgia. The judges and citizens I have interviewed believe that this reform measure makes the legal system more trustworthy."

To date, approximately 900 candidates have applied to take the October exam.¹⁵ To prepare for this surprisingly large number of examinees, the COJ is relying on CEELI to once again assist in the exam process. The COJ member responsible for administering the exams stated that CEELI's ongoing assistance is critical to the process of creating an independent judiciary, which he anticipates could take several years. Part of this process, the training of judges, will be undertaken by the newly created Judicial Training Center. CEELI has been planning to assist the Center in training activities aimed at preparing the October candidates, but it is now not clear to what extent it will do so (see discussion on Judicial Training below).

Two additional efforts by CEELI to assist the COJ are noteworthy. As mentioned above, CEELI encouraged the COJ to invite full mass media coverage of the examination process. CEELI's work with the Georgian media, which is highlighted in Section V E infra, is given much recognition by Georgians for facilitating greater public confidence in the judicial reform process. "We trust the government more," said one Georgian advocate, "because it is no longer hiding."

CEELI has also worked with the COJ to develop a draft Code of Judicial Ethics for judges, which is scheduled to be assessed by CEELI's research and legislative assistance division in August. COJ members said that CEELI's assistance, including workshops and research, was "very valuable."

¹⁵ Sitting judges who failed the exam in May will have a second opportunity to pass the exam in October. Procedures for un-seating judges who fail or who refuse to take the exam by October have not been finalized. New judges who passed the May exam will be seated in fall, 1998. Future plans envision that the procuracy and the bar will also be tested.

3 Judicial Training

During the two-and-a-half years that CEELI has worked in Georgia, it has conducted 75 training activities in the US and in Georgia, for a total of about 2500 participants (see Appendix Two, "ABA/CEELI - Georgia Training Programs")

A majority of these training activities have been for the benefit of Constitutional Court Judges, Supreme Court Judges, Council of Justice Members, other members of the legal profession associated with the judiciary, such as court administrators and legal assistants, and journalists

Highlights of Judicial Training conducted by CEELI include

- Assisted the COJ and the MOJ in providing training for 130 candidates preparing for the May judicial qualifying exams, on judicial independence, ethics, discipline, and media
- Conducted U S training for 23 judges and staff from the Constitutional and Supreme Courts of Georgia on court administration, judicial ethics, independence, association-building, and opinion writing
- Assisted the COJ and the MOJ in providing training for approximately 175 candidates for the newly created positions of legal assistants to the common courts
- Participated in and provided conference participants to the Constitutional Court's international conference on "The Execution of Judgments of Constitutional Courts "
- Provided a legal specialist and materials for assistance to the Constitutional Court on court administration, opinion writing, human rights, normative acts, and judicial discipline
- Organized the first regional seminars on the media and the judiciary and the rights of the accused for judges and journalists from Georgia, Armenia, and Azerbaijan on issues of fair and free reporting of the courts, the transparency of the judiciary, and legal protections for criminal defendants

In addition, CEELI has worked with the MOJ and the COJ to establish an independent Judicial Training Center (JTC), which will provide ongoing training to sitting judges as well as new judicial candidates The JTC, which was officially established as an NGO in 1998, is funded by the State and receives technical assistance from other donor providers, including the World Bank and other USAID programs

The director of the JTC reported that CEELI assistance has been important to the development of the center In 1997, CEELI organized site visits for members of the MOJ, the Constitutional Court, and the Council of Justice to judicial training centers in Latvia and Holland In Latvia, the Georgians participated in a 3-day workshop featuring judicial delegations from 17 countries in the CEE and NIS According to the JTC director and a member of the Georgian delegation that went to Latvia, the trip was instrumental in convincing Georgians of the need to structure their own JTC as an independent organization

“CEELI is known to be the organization in town that provides the best expertise in training Georgians on the judiciary,” said the JTC director. “We are counting on their continued commitment to the JTC.” About CEELI Liaison Barbara Swann’s assistance to the JTC, he said, “she has exceeded our expectations,” noting that “she always brings appropriate experts from the U S who introduce us to ideas that we can use.”

Ongoing collaborative assistance from CEELI is anticipated by the JTC. Specifically, it foresees receiving assistance in the training of trainers, continued assistance in providing training to judicial qualifying exam candidates, continued workshops and study tours on aspects of the judiciary, and support in the development of the JTC as a sustainable institution.

Immediate needs of the JTC include 1) training of Georgian judges to be JTC trainers, in advance of the September-October 1998 intensive training of candidates for the judicial qualifying examinations and 2) assistance in implementing the September-October training of candidates.

It is not clear whether CEELI will be authorized to respond to the JTC’s needs for immediate or long-term assistance. At this time, USAID has indicated that there are insufficient funds and an unclear mandate for the provision of such assistance from CEELI.

Conclusions

1 Objectives are being met

- CEELI has been instrumental in the development of a judiciary for Georgia that will be more empowered to impart justice in an ethical manner, without state influence or corruption. CEELI has accomplished this objective by 1) contributing to comprehensive legislation on court reform, 2) supporting a free and independent press that will hold government more accountable, and 3) designing, developing, and introducing a judicial qualifying exam in close partnership with the Council of Justice. The successful implementation of this exam over time will contribute to fulfilling several of the United Nations’ principles for an independent judiciary recognized in ABA/CEELI’s own survey for an independent judiciary. Success in this sphere is due largely to CEELI Liaison Barbara Swann, with the support of a strong local staff and short-term expert lawyers from the ABA.
- CEELI is recognized by Georgian reformers as the prevailing authority on judicial training in Georgia. Its U S -and-Georgian-based workshops and seminars are consistently cited by jurists for contributing to a more educated, professional, and credible judiciary. CEELI’s early and continuing work with developers of the Judicial Training Center has been pivotal to the JTC’s establishment as an independent organization dedicated to providing high-quality training to judges, procurators, and other judicial professionals.
- CEELI has also met the workplan objective for its overall program in Georgia of fostering collaboration among donors. Its efforts to coordinate international organizations, from the shipment of the examinations to the monitoring of them, has

been exemplary In the words of a Georgian, "CEELI is the one who coordinates the other donors "

2 Objectives are appropriate An independent judiciary is a fundamental ingredient in rule of law societies An independent judiciary is only possible with strong indigenous organizations dedicated to creating and maintaining an atmosphere of professionalism and integrity in the administration of justice

3 Impact is apparent and impressive ABA/CEELI has forged powerful and sometimes exclusive partnerships with some of the country's most influential leaders This network of reformers credits CEELI with making the judicial qualifying exams a reality, and for putting Georgia on the map in the NIS in the area of judicial reform CEELI is directly responsible for the use of procedures that ensure exam integrity Indigenous political will, combined with the kind of focused, energetic, and highly qualified legal expertise that CEELI provides, is the key to this success Through training and hands-on technical assistance, CEELI is directly contributing to a more qualified and credible judiciary, at both the national and regional levels, increased public confidence in governmental systems formerly cloaked in secrecy, and stronger indigenous organizations that will maintain higher standards of professionalism in the future

4 Results are designed for sustainability CEELI's success in Georgia could be a model for other CEELI programs in this context From its earliest work in Georgia, CEELI's approach has been to engage Georgians in the reform process as equal partners, assisting them in acquiring the tools they will need to sustain long-term impact It is doing so by designing and conducting relevant U S -based training activities, emphasizing training of Georgians as trainers, bringing highly qualified legal experts to Georgia to provide tailored technical assistance, working with Georgians to legislate strict standards of professionalism, encouraging a culture of conducting government business in the "sunshine", and by contributing to the development of an independent Judicial Training Center that includes mechanisms for institutional sustainability

Recommendations

1 CEELI should continue to work closely with the Council of Justice to establish an independent judiciary in Georgia This should include continued assistance to the COJ to ensure that judicial qualifying examinations are administered appropriately, until CEELI and the COJ are confident that high standards of professionalism can be maintained Assistance could also include support for the implementation of the second stage of testing, on character and fitness, since this is an area of expertise for the ABA Continued support for the implementation of codes of ethics and disciplinary standards is also important Other avenues of support should be identified by CEELI and the COJ together

2 CEELI should continue to provide workshops and seminars that are highly valued by Georgians, in both the U S and in Georgia, utilizing the expertise of legal professionals from the ABA

3 CEELI should be considered as an appropriate provider of continued support to the Judicial Training Center, since Georgians view CEELI as the most qualified organization for judicial training in Georgia, and CEELI has demonstrated capabilities in this field

5 2 Assistance to the Constitutional Court

Objectives

The first mentioning of CEELI assistance to the Constitutional Court occurs in the August 15, 1996 through January 15, 1997 workplan. Under the heading "Constitutional Court Training," CEELI is tasked with training and observation of American courts by several members of the Constitutional Court, and flying into Georgia of U S specialists on court organization, Western constitutional analysis, and efficient court administration. In the February 1 - July 31, 1997 workplan, CEELI is charged with providing to all nine justices of the Constitutional Court, as well as approximately 11 court staff members, an intensive three-week program of training in the United States. Also, a court administration specialist was scheduled to provide on-site advice on docketing, case procedure and other aspects of judicial administration.

The November 1, 1997 through April 30, 1998 CEELI workplan foresees the provision of a judicial specialist to participate in a workshop on judicial decision implementation, the continuation of literature/information support, the implementation of an outreach program to educate the public on the role of the courts, assistance with locating funding for U S based training of young Court staffers, and other activities aimed at promoting and institutionalizing independence of the judiciary.

Context

The Georgian Constitution of August 24, 1995 foresaw the creation of a special judicial body entrusted with the task of ensuring the conformity of all governmental action with the precepts of the Constitution. This special body, the Constitutional Court, was created in June of 1996 after an organic law of January 31, 1996 defined its structure and jurisdiction, a law on constitutional legal proceedings of March 21, 1996 determined its procedure, and a law on guarantees for the social protection of the members of the Constitutional Court of June 25, 1996 set the remuneration, pension and other benefits of the office. The Court consists of nine judges, organized in two collegia and one plenum.

The President, Parliament and Supreme Court of Georgia each appoint three members of the Court for a term of ten years. Properly seized, the Court has the power to determine the constitutionality of any normative act, including international treaties, to determine the constitutional powers of agencies, to review the constitutionality of referenda and elections, and ensure compliance with human rights.

Findings

In its written report submitted to the evaluation team at the time of interview, the Constitutional Court states that "The American Bar Association is one of the main partners of the Constitutional Court of Georgia. In collaboration with the United States Agency for International Development it has elaborated the US Judiciary Development program that was successfully executed in 1997." As the Chairman of the Constitutional Court stated, he was very much involved, in 1995, in the process of drafting the Georgian Constitution, and in "selecting the strategic goals." "Americans helped us a lot to get to the right decisions." The present Chairman and Vice-Chairman of the Constitutional

Court in fact went to the University of Chicago to receive some advice from Professor Herman Schwartz and Professor Lawrence Lessig. Professor Schwartz, in particular, advised them to choose the Western European institution of a specialized body of constitutional review of governmental acts, i.e. a constitutional court, over the U.S. model of all courts having power of judicial review.

The first constitutional claim was filed with the Court in September, 1996. According to the Court's own written statistics, about 80 claims, lodged mostly by Georgian citizens, and three petitions, submitted by courts of ordinary jurisdiction, have been filed with this institution since its inception. The Court has reviewed 53 claims and the three petitions, hearing an average of two to three cases per month. It declined to review the merits of 25 constitutional claims and two petitions. Twenty constitutional claims and one petition were reviewed on the merits. Seven claims and one petition succeeded in the Court's declaration of unconstitutionality of the disputed acts of government, nine claims were unsuccessful, and five cases were "suspended" [sic, probably rendered moot] due to the government's recognition of invalidity of the disputed acts or because the applicants had withdrawn their claims. 50% of the claims dealt with Article 21 of the Constitution (right to property), 14% referred to Article 30 (freedom of business and prohibition of monopolies). Other claims dealt with Articles 42 (right to appeal to court), 39 (rights not specified in the Constitution, but universally recognized), 18 (right to personal freedom and procedural safeguards) and 26 (right to create and join political associations).

Regarding implementation of its decisions, the Chairman elaborated: "Six months ago, we would have said: Of course, everybody appreciates us and implements [our decisions]." Most recently, however, the Court has had a problem with the implementation of one of its decisions. The Ministry of Education does not prepare a new decree in lieu of the one held unconstitutional by the Court, defying a direct order of the Court. Asked about CEELI, the Chairman stated that the relationship with the organization was "very close and personal."

One important type of active assistance given by CEELI was helping "qualify" the members of the Constitutional Court. Together with CEELI and a representative from USAID, two ways of such "qualification" were chosen: (1) flying in U.S. and other foreign experts to share their experience and expertise, and (2) organize study trips of Court members and key personnel to the United States. ABA/CEELI thus organized visits to Georgia by U.S. experts, short-term and long-term, amongst them Judge Jerome Smith, and the Chief Clerk of the United States Supreme Court. The Constitutional Court greatly appreciated these visits, but, as its Chairman remarked, the U.S. experts "should stay for more than two to three days, at least, they should stay for one week." Also, at present, a student intern from Canada helps the Court with translating its decisions. The Court would appreciate similar assistance from the U.S.

ABA/CEELI also helped organize a conference with the Venice Commission of the Council of Europe which allowed a broad exchange of views amongst the representatives of constitutional courts of many countries. Seven judges and staff members of the Constitutional Court visited the United States (Chicago, Washington, D.C.) in August/September, 1997. Their program was "rich and fruitful." Such study trips to the United States are considered to remain useful. In the future, the Chairman remarked, however, large Georgian Constitutional Court delegations spending two to three weeks in the United States might no longer be necessary, but the sending of a "few specialists -- staffers or members of the Court -- for short, focused trips," e.g. regarding organization of the court, etc. might still be. The Court also appreciated the help ABA/CEELI has provided in raising the level

of legal knowledge of the population, through key assistance to the moot court competitions of the "Legal Olympiad" and extensive liaison work with the media

In the long run, the Court opined, an informed citizenry will best ensure implementation of the Court's decisions. To this end, brochures on citizens' rights and the protective functions of the Court will be distributed, and Court decisions, with a resume in English, will be put on the Internet. As the Vice-Chairman of the Constitutional Court remarked in a later interview, CEELI liaisons did not assist in the substance of the Court's decision-making (they "never crossed the line"), but helped mainly in the organization of the Court and its work. First CEELI Liaison Robert La Mont helped raise the professional quality of the Court, inter alia, by suggesting the institution of law clerks. "When our tenure expires in about 8 years from now, our law clerks should be able to replace us." Generally, the Vice-Chairman stated, the representatives of the ABA "are not imposing their ideas." They are "no Messiahs." "ABA's cooperation is important to prepare professionals who prepare proper verdicts."

Conclusions

1 ABA/CEELI has met the objectives stated in its workplans. Through the rendering of advice, the provision of experts and the organization of study visits to the United States, ABA/CEELI has helped to enhance the professional capacities of the members of the Constitutional Court -- an institution novel to Georgia, but key to its respect for the rule of law. CEELI liaisons have established a trusting relationship with leading members of the Court, a "partnership." They also have helped increase awareness of people's rights and the functions of the Court by accessing the media, organizing moot court competitions in high schools, and disseminating information on the Court's work. Success in these efforts is due, at least in part, to the excellent communication skills and "media savvy" of past and present CEELI liaisons as well as the openness of their Georgian counterparts.

2 The focus of CEELI's activities on the area of technical assistance to the Court appears most appropriate. The Court does not seek advice regarding the substance of its decisions. Where it is most likely to need further help is in enhancing the effectiveness of its administration, its organization, and related areas of institutional management. Also, working with the media, high schools and the public at large was appropriate and helpful given both the local context and the liaisons involved.

3 The impact of CEELI's work has been substantial. It is reflected not only in the telling characterization by leading members of the Court of their relationship with CEELI liaisons as "very close and personal" or "real professional," respectively. The impact of various experts' advice shows itself in the very institution of the Court, in the structuring of its administration, its staffing, and its modus operandi. The implementation of the law clerk system is credited to the first CEELI liaison. Media appearances as well as other projects of education of the public on citizens' rights and the role of the Court are beginning to engender confidence in the work of the Court, as suggested by its caseload.

4 The initial structural assistance provided by CEELI and its experts is sustainable, to the extent it is part of the Court's permanent organization. Assistance will still be needed on details of court management, judicial training (if requested), and continuing education of the public.

Recommendations

1 ABA/CEELI should continue to provide technical assistance to the Constitutional Court as requested. United States experts should preferably be brought in for a period of more than two or three days to accommodate the needs of the members of the Court. Court- and staff member study visits to the United States should be tailored to the particular needs identified by the Constitutional Court.

2 Efforts to educate the public about the rule of law, the independence of the courts and the key role of the Constitutional Court in the protection of people's rights should be continued. In particular, interactive exercises such as high school moot court competitions, television and radio programs as well as publication and dissemination of brochures on the constitutional structure, citizens' rights and the work of the Court should be supported. Individual case studies, success stories in the quest for the rule of law, could provide vivid illustrations.

3 ABA/CEELI Georgia enjoys the rare privilege of high-level, partnership-type relations with elites of the country -- be they in Parliament or, in this case, in the Constitutional Court. To continue this work successfully, the organization should try to specifically select liaisons for Georgia who have at least a similar ease of communication with these personalities as the past and present CEELI Liaisons, and who could aspire to maintain the high level of media access their predecessors have achieved.

5.3 Bar Development and Continuing Legal Education

Objectives

The present workplan, in line with earlier formulations, emphasizes, as long-term goals, the strengthening of the organization and effectiveness of professional legal organizations in Georgia, the introduction of continuing legal education and training programs, the improvement of the status of lawyers in the profession and the public arena, assistance to designing professional licensing standards for Georgian attorneys, encouraging lawyers to challenge the power of the state and to take on unpopular causes, as well as to make lawyers in Georgia aware of the benefits of a strong, independent professional organization of lawyers. In the short term, ABA/CEELI is tasked with improving the capacity of the Georgian Young Lawyers Association (GYLA) in delivering continuing legal education and other services to its members and the public by, inter alia, advocacy grants, providing instructional materials for CLE courses, providing books and other materials for the GYLA Library, helping them conduct programs to inform the public about their legal rights, and promoting the branching out of the association in other parts of Georgia. Also, the development of an independent lawyers association without GYLA's present age limit of forty years should be explored.

Context

There is no longer an organized and functioning mandatory bar in Georgia. Thus there are no turf wars, either, between advocates and jurists as have occurred in other states of the former Soviet Union. The collegia of advocates continue a formal existence, but they have lost their power of being the gatekeepers and disciplining bodies of the legal profession. Besides the collegia, individual law firms have sprung up, licensed by the Ministry of Justice.

At least three versions of a draft law on the bar exist, and they are scheduled to be debated in the Georgian Parliament this fall. In the absence of any meaningful system of quality control of access to the legal profession, GYLA was founded as a private association of young, reformist lawyers committed to standards of professional excellence and integrity. Its membership and activities have greatly expanded, and it has emerged as the leading lawyers association in the nation. Membership is limited by an age ceiling of forty years.

Findings

On the macro-level, ABA/CEELI has submitted an assessment of a draft law on the bar. There are at least three drafts presently under discussion. CEELI would like to see the success of the judicial exam replicated and have a national bar exam organized by the Council of Justice as an entrance requirement for the practice of law. Only the young reformers have come out in favor of this model, though. They do not have a majority in Parliament, and CEELI liaisons now envision being part of a broader drafting committee on this issue.

In 1994, the Georgian Young Lawyers Association was founded at their own initiative. The members see themselves as an idealistic organization dedicated to the rule of law and high standards of professional competency and ethics. They intend to bring integrity into a system in which, as they see it, "more than 50% of the cases" are decided by corruption. As its present Chairman explained, "we [want to] create networks of fairness against the networks of unfairness." GYLA arose from the ranks of the Georgian Young Constitutionalists which wrote much of the 1995 Georgian Constitution under the leadership of the present Chairman of the Constitutional Court, and the intellectual influence of Prof. Herman Schwartz at the Washington College of Law at American University. They report that their idealism was so far out of the mainstream then that they were called "Crazy Lawyers Association."

GYLA is governed by a Board of Directors of 21 members. Members of this board are elected annually and meet monthly. The Board of Directors elects a Chairman and a Vice-Chairman, both with executive authority. They have five regional offices (in Batumi, Kutaisi, Rustavi, Gori and Zugdidi), one of which is presently reorganized as an independent entity (the "Gori Young Lawyers Organization"). GYLA's membership is limited to law students and lawyers under 40 years of age. The reason for this limitation was the perceived need not to offend older legal professionals who were not as committed to reform. Since some of its members now approach 40, and since the need to include older people as leaders of the reform movement has now been recognized, the organization is presently rethinking the age limit.

GYLA now claims 500 members, ranging from second-year law students to the best faculty members of the civil and criminal law departments of Tbilisi State. 200 of these members are very active, and the leadership is worried about the organization becoming too large. New members are selected by the Board of Directors upon recommendation by two existing members and by secret ballot. The GYLA Board is thinking about introducing some sort of entrance exam to ensure the quality of membership, and possibly, becoming the nucleus for a national bar association whom the public can trust because their members have passed some rigorous, objective, fairly and transparently administered test.

To increase the level of competency of their members, GYLA provides weekly lectures and seminars offered by members, professors and specialists "We try to get legal information any way we can" -- through experts some of them foreign, workshops, a legal library One measure of their organization's effectiveness is the high quality of their members, counting amongst them not only many assistants/clerks of the Constitutional Court, members of the law faculty of Tbilisi State, procurators, etc Also, all members of GYLA presenting themselves to the first judicial exam, failed by so many others, passed One of the 34 persons who passed the Tbilisi exam is Lali Ashelashvili, head of the GYLA regional office in Kutaisi, now slated to become an appellate court judge in her home town

From its inception, the organization has also provided legal consultation to anybody free of charge via a telephone hotline They offer advice to NGOs on issues such as registration, taxation, etc and provide free legal assistance to journalists Originally, this free consultation program was funded by the Eurasia Foundation, now it is financed by GYLA members GYLA also teaches highlights of the rule of law to secondary school children throughout the regions, and have organized a "Legal Olympiad," the equivalent of a national high school and institute moot court competition ABA/CEELI has assisted greatly in the organization of this event It is also thinking of providing a "summer law school" program to which access should be provided for everyone

ABA/CEELI is one of the donors to this organization, the other major source of funding being COLPI (Soros foundation) CEELI has provided two greatly appreciated advocacy subgrants -- one for the provision of computers, office furniture etc (\$6,800), the other (\$24,966 27) for the establishment and enhancement of their legal information centers/libraries both in Tbilisi and the regional offices, including provision of books, rent of offices and payment of certain librarian salaries The team has inspected the library of the GYLA central office of Tbilisi and the regional office in Kutaisi Both centers' resources are used extensively and are most helpful to the provision of both pro bono services to the public and legal education of members, given the dearth of access to sources of law in the state institutions ABA/CEELI Liaison Ted Curtin worked with the organization to develop their grant reporting strategy, to improve their accountability, to diversify their range of donors, to generate limited income of their own, to develop membership lists, and to expand its work in the regions

ABA/CEELI's role, however, has gone significantly beyond the provision of money and equipment GYLA sees CEELI as a critical source of moral support and an important intellectual resource GYLA considers ABA/CEELI as "unique" among its donors, because, as one of its members said, "we speak the same language as the ABA " When they have ideas for seminars/workshops, they call ABA/CEELI and ABA/CEELI will assist them swiftly and unbureaucratically

Beyond or in conjunction with GYLA, ABA/CEELI has organized independent seminars on issues of concern to the local legal community They include workshops on media law, judicial reform, and implementation of decisions by the Constitutional Court Some of these workshops have been held in the regions ABA/CEELI also introduced GYLA to commercial law training materials and intends to upgrade its assistance in this area A workshop on law office management conducted by the prior ABA/CEELI liaison has been credited with the establishment of several private law firms

Conclusions

- 1 ABA/CEELI has met its short-term goals regarding the strengthening of GYLA as the leading lawyers association in Georgia. It has provided infrastructure support for GYLA's legal information centers, and its pertinent advocacy grants have met their stated, limited goals. In particular, the provision of library and online support has helped in providing competent free legal advice to the public.
- 2 GYLA is a strong, sustainable organization of Georgian young lawyers with a clear sense of mission. Its structure and activities are indigenous, and have begun to be indigenously funded. ABA/CEELI has maintained a close professional relationship with GYLA, based on mutual respect. The liaisons have provided intellectual and moral support, whenever requested. GYLA has received assistance in the form of judges visiting from the United States and of liaisons addressing its members in the context of formal workshops and seminars.
- 3 Most of the training provided by GYLA was done internally, using the traditional vertical methods of dissemination of information.
- 4 Efforts to regionalize GYLA's operations have been intensified, ABA/CEELI liaisons have visited the five local offices, with the exception of Zugdidi, a border town near Abchasia for which a travel warning has been issued by the Department of State.
- 5 Efforts with respect to the long-term goals have met with moderate, and mixed, success. An organization of legal professionals which would enforce admission and disciplinary standards is being discussed in the legislature as are professional licensing standards and the issue of a bar examination. Even though its 1996 assessment of the draft law on the bar has been insufficiently attuned to local conditions, CEELI has been and continues to be an important part of this legislative discussion -- the result of which will hopefully increase the standing of lawyers in the public arena.
- 6 Continuing Legal Education has been introduced, mostly by GYLA, to the legal infrastructure of Georgia. It sorely needs methodological guidance. Efforts to encourage lawyers to challenge the power of the state have been quite successful, one example being the creation and implementation of the NGO "Article 42 of the Constitution."

Recommendations

- 1 ABA/CEELI should concentrate its work in the legislative field on the creation of an instrument that would help to instill public trust in the competency and integrity of the persons people turn to obtain legal advice. Access to membership in the bar should be predicated on passing rigorous, uncorrupted exams at the law school level -- or a national bar examination following the successful judicial examination model.
- 2 The establishment of a national bar association, if desired by the Georgians, could help in promoting, setting and administering standards of professional competency and ethics. ABA/CEELI should help the process of legislative structuring by demonstrating the advantages of an independent, self-regulatory body of lawyers with compulsory membership.

3 In the absence of legislative action, ABA/CEELI should continue to empower GYLA as the voluntary lawyers association whose membership should be perceived by the public as a seal of trust. Support of GYLA measures to enhance its own standards by, e.g. introducing membership exams and certifications in specific areas of legal expertise, should be supported.

4 In supporting GYLA, ABA/CEELI should concentrate on helping to improve the organization's delivery of legal information to its members and the public. Continuing Legal Education can only benefit from the American experience. As successfully undertaken in Russia, it should train the trainers in interactive techniques of instruction, and conduct workshops on the ground using the services of one of its successful specialists. Starting in a teaching workshop, it could also have members of GYLA produce teaching materials based on their own legal context in areas of particular need (e.g. the new commercial law).

5 If GYLA is providing "remedial legal education" via summer law schools or otherwise, it should also take into account teaching techniques used in American law schools (see section on legal education).

6 ABA/CEELI should continue and enhance its involvement with the regions of this country. It should organize workshops on topics of interest to the regional offices, and should focus on the training of teachers in these organizations as well.

5.4 Legal Education

Objectives

The current workplan and the one immediately preceding it have charged ABA/CEELI with maintaining contact with various younger law professors at Tbilisi State University, the Faculty for Law and International Diplomacy, and the Technical University of Georgia Law Faculty with a view toward discussing legal education reform, improving teaching techniques, curriculum development, clinical legal education and admissions/licensing standardization.

Context

The inherited center of legal education in this country is Tbilisi State University in both its Legal Studies Department and International Law and International Relations Department. It graduates over 800 and about 50 students, respectively, from these departments each year. Tbilisi State has traditionally been surrounded by several other state law schools outside the capital. These state schools have now been joined by a large array of private institutions who only needed the formalities of a license from the Ministry of Education and a stamp from the Ministry of Justice to offer their services -- which could be easily procured, according to field testimony, via bribery. There is no effective quality control, no accreditation -- even though the Parliament, on June 27, 1997, adopted a framework law on education, which gave the Ministry of Education, together with the President, the power to accredit private law schools and set their curricula. Access to law schools, even the most prestigious one, Tbilisi State, can, according to all interviewees asked this question, be bought, so can a law school diploma. Faculty at Tbilisi State are paid very low salaries (in one instance, \$20 a month) and need to supplement their income by teaching at more than one institution or taking on extraneous jobs. Faculty and student libraries as well as access to technology are insufficient.

Overall, the number of law schools, old and new, has been estimated at 250. Kutaisi, for example, has one state law school, while, since 1992, 5 to 6 private law schools have opened shop in this town and are operating at present. Uniformly, the quality of these private institutions has been rated inferior by Georgian law students and graduates. According to a 1998 World Bank estimate, all of these schools have about 40,000 students, resulting from "the extremely lax licensing requirements of the Ministry of Education, "[a] great majority of these new institutions do not have adequate infrastructure, teaching tools or faculties to provide even simple education" (World Bank, Georgia Judicial Assessment, Report No. 17356-GE, at 25 [April 10, 1998]). According to our interviewees' estimates, all of the law schools in Georgia graduate about 8,000 students a year, the World Bank report estimates the number of all students enrolled at private law schools at 40,000 (*ibid.*). Many of these students, even if graduating, do not become lawyers, but use the law degree as an entree into business, the country does not have yet a serious M.B.A. program.

Findings

Present as well as previous ABA/CEELI liaisons have tried to establish contact with the administration of Tbilisi State University Department of Legal Studies. These efforts were less than successful. On the other hand, the Dean of Batumi State Law Faculty, a traditional rival of Tbilisi State, has expressed interest to Mr. Curtin in establishing a clinical program or some other practice-based, interactive teaching model at his institution. Also, the Chairman of the Supreme Court of Georgia, co-founder of the Technical University Faculty of Law, has expressed an interest in pursuing cooperation with the ABA in this field.

Mr. Curtin has established, sometimes at personal risk for the faculty involved, contact and a dialogue about curriculum and teaching reform with present professors at Tbilisi State. Also, the Head of Staff of the Parliamentary Committee on Constitutional and Legal Affairs, a close cooperator with CEELI, teaches at Tbilisi State. Beyond that, the Georgian Young Lawyers Association has decided to fill the gap somewhat and offer, to students and lawyers alike, what they call "remedial legal education" -- courses that make up for the current deficiencies of law school education and offer units of instruction on the new laws of Georgia: the Civil Code, the Law on Entrepreneurs, the Law on Bankruptcy, the Constitution, etc. They also try to offer a "summer law school" with a similar purpose in mind.

Due to the strength of the so-called "education mafia," a Soviet-time holdover cadre of gatekeepers to the legal profession, many observers view attempts at legal education reform as necessary, but futile at the present time. The World Bank has decided not to fund a multi-million dollar project in this area, but remains interested in the area. Nevertheless, young Georgian reformers are determined to push hard in this field and to overcome endemic corruption and traditional, ineffective teaching methods and curriculum contents. A member of Parliament with close CEELI contacts, stated that he would push for legal education reform in Parliament this fall. The co-founder of GYLA, David Usuprashvili, also agreed that the "subsystem" of legal education might be successfully broken out of the hold the "mafia" has on the overall field of education. Present ABA liaisons have provided relevant actors with the current ABA standards and procedures of accreditation.

Conclusions

1 ABA/CEELI has fulfilled its rather limited objectives in the field of legal education. Liaisons have made efforts to reach out to various actors, including relevant deans and faculty. It is tough to succeed in an area where the World Bank has failed to identify significant prospects for substantive progress.

2 The scope of work in the field of education, however, might have been drawn too narrowly. Law schools are the launching pads for careers in the law. They need to be technically and morally equipped to lift the young, aspiring minds into the sky of a professional life committed to the ideals of utmost technical proficiency and ethical integrity. To achieve this objective, corruption at the front and back end of legal training, as well as throughout the course of law school, needs to be weeded out. Technically, the most efficient methods of interactive teaching, a curriculum preparing for the needs of the practice of law in the 21st century, and a faculty and administration able and willing to make these goals a reality, would appear to be necessary for a sound legal educational system. This system needs to be built on standards of high academic quality, integrity, and sustainability.

Recommendations

1 Beyond the submission of the written ABA standards and procedures for accreditation of U.S. law schools, ABA/CEELI should enter into a dialogue, if contextually appropriate, with the relevant actors, i.e. Parliament, the Ministry of Education, the Ministry of Justice, the Council of Justice, and law deans, regarding the establishment of a regulatory framework of legal education. The project of a pertinent concept paper should be explored with him and his staff. Dean James White, longtime Consultant to the ABA Section on Legal Education and supporter of the CEELI program, and/or his office would be a most useful resource to consult in this effort. A workshop might be organized which would address both the American model of law school quality control and the Georgian context, and which would attempt to tailor a solution as bold and necessary as the judicial exam in the field of judicial reform. An accreditation regime administered by an incorruptible body of experts in the field of legal education, consisting of strict standards of academic quality, but allowing for a certain freedom of individual institutions to design their curricula and to enhance teaching effectiveness, coupled with tough enforcement procedures (rigorous inspection visits, etc.), might, if legislated, be the formula to overcome the resistance of entrenched traditional interests.

2 Teaching reform should be considered to be undertaken at certain strategically selected institutions. American law faculty could ideally be flown in to teach for a semester or a year, preferably a comparative law course with their Georgian counterpart in their area of expertise. Co-funding for this could be established through sister law schools in the U.S. (possibly under Ambassador Richard Morningstar's "Partnerships for Freedom" program), USIS, Soros or Fulbright. Such co-teaching models could effectively convey the advantages of the uniquely American way of interactive, Socratic teaching. Another, probably slightly less effective way is sending Georgian professors to American law schools for a crash course in teaching (such as the AALS' annual workshop for beginning law teachers) or a joint workshop on teaching methodology organized in Georgia.

3 More than the addition of clinical programs, the introduction of rigorous dialogue in mainstream classes could revolutionize Georgian legal education. It would turn away from the vertical approach

to teaching, require the student to review and digest relevant materials ahead of time and to make her publicly articulate and defend her arguments. Using her mind in the classroom, she would receive a solid foundation for her career. Such a sea change in teaching methodology would need the enthusiasm of youthful law faculty who could be bridgeheads in the phalanx of the traditional monologic professoriate. The argument that interactive teaching and, specifically, the Socratic dialogue, is uniquely suited to the common law does not withstand close scrutiny. Cases play an important role in the legal systems of the civil law as well, and their factual scenarios as well as carefully crafted hypotheticals can be used easily to enhance the essential advocacy skills of a budding Georgian advocate.

This transformation of traditional substantive courses by the use of interactive and demanding teaching methods should be accompanied by the addition of skills courses such as moot court, instruction in effective interviewing, counseling and negotiation, as well as the handling of live client cases via pro bono in-house clinics or external, closely faculty-supervised placements in government agencies, courts or NGOs. Again, the ABA, through CEELI, could give unique advice, drawing on the expertise of its many law faculty members as well as the successful clinics established in Russia and Ukraine.

Also, CEELI Georgia should continue its involvement in preparing for the Jessup International Law Moot Court Competition in conjunction with the Georgia Young Lawyers Association, as well as its association with the Legal Olympiad, a successful moot court competition at the high school and institute levels.

5.5 Media and Law

Context

The citizens of the Republic of Georgia enjoy a relatively free and active press. As in many countries which have emerged from socialist rule, this freedom remains fragile, and government is unused to media scrutiny. Moreover, the rapid growth of the media has meant that the old state run media, still in place, is increasingly out of step with and threatened by the development of a new breed of journalists. The potential for a more repressive media regime remains. In this context, both ABA/CEELI and USIS have targeted media and media law as sector for technical assistance and strengthening.

Objectives

CEELI's workplans contain no express requirements related to media and the law, but the work is encouraged by IR 2.2.1, which strives for the "enactment of effective and fair laws," IR 2.2.2, "increased respect for the legal system," and SO 2.1, "Increased, Better-Informed Citizens' Participation in Political and Economic Decision-Making."

Findings

ABA/CEELI has been actively involved with other interested technical assistance groups to promote greater involvement of the media in scrutinizing government affairs. They have also promoted better understanding and appreciation of the role of the media by government and political leaders.

An ABA/CEELI liaison attended a conference on Mass Media in October 1997, organized by the Open Society Foundation and the National Democratic Institute. From that conference an informal consultancy group was formed, consisting of NDI, Soros, ABA and Internet.

Subsequent meetings were organized for journalists from all media branches for the purpose of discussing and ultimately promoting a new Law on the Mass Media. Numerous drafts of the law had been prepared, but were languishing in the legislature. None of the drafts had received much input from the "new" media. The need for greater protection had come to a head earlier when the government withdrew the license for one of the privately owned tv stations, an action which created considerable backlash. Journalists, editors, and owners were now ready to take further action in pushing for a new law.

The legislature responded to the increased activism, and held several meetings on a new draft of the law, to which journalists and media persons were invited to give their views. The new NGO Article 42 was invited to attend. Issues were who would control the licensing process, how much protection should the media have in law, and how would the relationship between state owned media and the new, private media be regulated?

In February, a leading media law expert and former FCC Chairman Nicholas Johnson came to Georgia on behalf of the ABA/CEELI effort. Johnson and other experts were in Tbilisi for five days, working with the drafters of the new law. According to one observer, Johnson's involvement had a powerful impact on the Georgian law makers, raising the media law to a new priority, and producing substantive changes in the draft law. Johnson returned to the USA to set up a Georgian Mass Media Web Site (<http://solimar.net/~njohnson>)

An additional ABA/CEELI input was an assessment by American experts of the draft Law on the Mass Media. According to two sources, this assessment was not very useful, in that it reflected too much current US media law issues.

The media law did not come to a vote due to the serious distraction caused by the attempted assassination of the President, and a subsequent parliamentary debate on changing the Georgian constitution. However, respondents predict that when the draft law goes to the floor for vote, it will have the support and endorsement of a broad section of the "industry", including government. This would not have happened without the initiative of ABA/CEELI and its partners.

Subsequently, ABA/CEELI organized, with support from Soros, a regional meeting involving Georgia, Armenia and Azerbaijan journalists, as well as judges and media regulatory officials from the three countries. This meeting was considered remarkable by many observers because of the hostility between and among many elements of the three countries. In organizing the meeting, ABA/CEELI insisted on departing from the separate delegation, official speaker format of Soviet times, by seating people from different countries and sectors together and by a more interactive, breakout discussion style of workshop familiar to Americans. This generated some tension and resistance at the beginning, but, according to several participants, in the end, even the conservatives appreciated the meeting. Discussions for a second regional meeting are underway.

The regional workshop is one example of how CEELI has promoted a free press in Georgia by coordinating activities that have encouraged the media to monitor and report on progress in judicial

reform Two journalists from a leading state newspaper based in Tbilisi were interviewed and reported that workshops and seminars sponsored by CEELI helped them understand issues fundamental to an independent judiciary, as well as issues fundamental to a free press The journalists stated that the media is now much more independent than it has ever been in Georgia, and there is an ongoing need for journalists to be educated and trained on topics related to rule of law, democracy, and media rights

Conclusions

1 The objective of strengthening media law through increased transparency and participation has been substantially met ABA/CEELI has worked collaboratively with USIS, Soros, NDI, and Internet to mount and sustain a campaign to draft a more media friendly law, and to raise the matter to a higher priority in the Georgian parliament This accomplishment helps meet the objective of “enactment of effective and fair laws ” CEELI has also helped generate “increased respect for the legal system” but educating the media on issues related to rule of law, which has enabled journalists to report on progress and problems in the reform process

2 The objective was appropriate, in that the parliament had already begun to draft media laws, the emergent private media sector had become energized by events perceived as arbitrary and was ready to become more involved, other technical assistance groups has already begun to work on the issue, and, finally, the ABA/CEELI liaison had a strong professional background in media practice and law, and could bring considerable personal expertise and understanding to the task

3 The impact of the campaign has been significant, in that media law reform in a few short months has been moved from a desultory, low priority task without much participation or consensus, to a high priority draft law which has the support of industry, government and outside experts Although the ABA/CEELI legal assessment was not effective, the participation of American experts such as Nicholas Johnson and the considerable expertise of the ABA/CEELI liaison meant that the Georgian drafters and participants had direct and immediate access to the best of American experience An additional positive factor was the collaborative effort between NDI, Soros, Internet, and to some extent, NGO Article 42 This broad collaboration has become something of a hallmark of the ABA/CEELI style in Georgia, and does much to diffuse potential charges of ABA dominance, as well as increasing the credibility and acceptability of the advice provided

4 Whether the level of cooperation and advocacy effort for media law can be sustained remains to be seen The mobilization effort is relatively recent, and the law has yet to be passed The coalition of which ABA is a part will likely remain active for the near term Eventually, Georgian organizations will have to emerge to take up the long term responsibility for monitoring and advocacy work

Recommendation

1 ABA/CEELI leadership will continue to be needed in this sector, at least until the law is passed At that point, the liaison may want to consider how best to structure and “institutional hand-off”, permitting CEELI to move on to other substantive issues which can benefit from the kind of mobilization effort successfully undertaken in media law

2 ABA/CEELI should continue to organize workshops and seminars for the media on issues related to rule of law and rights of the media, as this work is significant in the development of an informed and free press and thus a more educated public

5 6 NGO Article 42

Context

In August of 1998 a new Criminal Procedure Code will go into effect in Georgia. Among other things, this code will give persons being held on allegation of a crime the right to make contact with family and to secure legal representation. It also protects the accused from torture. This law gives effect to the provisions under Article 42 of the Georgian constitution guaranteeing fundamental human rights. As with any right guaranteed by law, vigilance and direct action are often necessary to ensure that the right is realized. In Georgia, where Soviet mentality still prevails, where the judiciary has been viewed as so corrupt as to be useless, where it is said that the role of the defense advocate of a person accused of a crime is simply to negotiate the bribe price, and where the police forces have been the last to feel the wind of reform now affecting other parts of the legal system, an enlightened criminal code runs the danger of having little effect.

Findings

According to interviews with its members, NGO Article 42 was established in late 1997 for the purpose of raising the level of understanding and protection for fundamental human rights guaranteed by Article 42 of the Georgian Constitution¹⁶. It is a Chartered Non Profit (officially registered) established mostly by a group of young private lawyers who were concerned not only with the abuse of power by the state in matters of "normal crime", but also in the economic field through arbitrary and corrupt interpretation of commercial and tax laws.

The group has an elected set of officers and a 7- person Board of Directors which meets every two weeks. NGO 42 has 60 members to date, including 15 advocates, 20 corporate lawyers, and some law students and judges. With an Advocacy Grant from CEELI they have rented and equipped an office. Audits will be done annually and published in their annual report.

In its short life, NGO 42 has compiled an impressive record of activities. Meeting 3 times a week they discuss issues of commercial law, ethical behavior of lawyers, problems of the criminal code, and how to advance their main purpose, which is human rights.

Although formed in 1997, an early grant proposal for some of their activities failed to receive support from the Open Society Foundation. Later, after developing an association with ABA/CEELI liaison, they reapplied and won support for an ambitious new project. This project will have a 24-hour hot line where relatives of persons accused of crimes and held in detention can call and receive assistance. Among other things, NGO 42 will go to the prison, interview the accused on video tape, inform him

¹⁶ Two members of the team met with 8 members of NGO 42 on a Sunday afternoon. The two leaders of the group were in the US for training. Nevertheless, the team was impressed by the commitment and knowledge of the 'ordinary' members of the group, which augers well for the groups potential sustainability.

of his rights, and assist in any way to assure that these rights are protected. Eventually a "pro bono" clinic using students to provide initial legal consultations under supervision of attorneys and faculty will be established.

The NGO 42 relationship with ABA/CEELI is fairly recent, but the respondents were able to clearly state their consensus on the role of ABA in assisting them.¹⁷ Members understand that ABA is supported by USAID. Describing their relationship with ABA, they made the following points:

- ABA assistance to "public" organizations (Legal Associations) is as important as assistance to government institutions
- Most people involved with law know ABA through its leadership in the judicial examination. This created a very favorable impression.
- ABA is open and very responsive. We can call them easily and ask for advice or assistance.
- Association with ABA has given NGO 42 credibility.

Conclusions

1 ABA/CEELI's assistance to NGO 42 is helping to meet the objective of strengthening legal professional associations. With the more mature GYLA, NGO 42 appears well situated to become an effective organization in the field of human rights.

2 The objective is clearly appropriate. The new Georgian constitution, the Criminal Procedure Code, and the Procurator Code all recently passed add further implementing authority for the protection of rights. Non-governmental legal associations are a necessary part of the equation of active support, awareness and protection of these rights in any free society.

3 The impact of NGO 42 understandably has yet to be felt. However, by its very presence and rapid growth, it has begun to raise awareness of the human rights issue.

4 Attention to well structured organization, strong leadership, a committed and growing membership and an already diverse funding base suggest that the possibility of NGO 42 becoming sustainable is reasonably good.

Recommendation

1 NGO 42 could become a positive model, with the Georgia Young Lawyers Association, for the advancement of professionalism and legal service to the community. ABA/CEELI should continue to provide modest financial support, but more important, assistance with program and organizational development.

¹⁷ ABA is the preferred usage among the members of this group.

5.7 Legislative Assistance

Objectives

The latest ABA/CEELI workplan, in consonance with the earlier ones, tasks ABA/CEELI with responding to requests for assessments of legislation as they are received

Context

Georgia's legal infrastructure is in the process of being reconceived from the top down. Legislation is the main avenue of that groundbreaking effort. Major initiatives have been taken, others are underway. Reformers are receptive to outside influence, both from Europe, which provides the traditional background of its legal culture and holds the prospect of closer economic integration, and the United States, whose ideals of freedom, democracy, human rights, and checks and balances of governmental powers unite the architects of the new Georgia.

Findings

ABA/CEELI is closely involved with legislation for Georgia. CEELI has prepared formal assessments of 15 Georgian draft laws, 11 of which were made available to the inspection team during its visit to CEELI headquarters in Washington, D.C. These assessments were requested mostly by key reformers such as the Chairman of the Ministry of Justice Committee on Legal Reform as well as the Chairmen of the Parliamentary Committees on Constitutional and Legal Affairs, Economic Affairs, the Environment and the Media.

The local ABA/CEELI liaisons have developed a "real professional relationship" with key reformers. They do not appear to their Georgian partners to have a personal or political agenda; they ask where they could be of help, and they provide assistance in a swift and timely manner. The drafting of formal assessment papers was only one way of responding to Georgian requests for legislative assistance. Another method was the provision of American experts as short-term legal specialists (one example being the swift response by the ABA to the Georgians' request for an FBI Specialist to comment on the Law on Operative Investigation Methods), the organization of seminars and workshops (such as the ones on mass media and on the judiciary). Some of the assessments were also published, at the initiative of person who requested them, in local newspaper, and the local CEELI liaison has been asked to explicate some of them on Georgian TV. Generally speaking, the resident ABA liaisons accompany the process of legislation from beginning to end and receive information on the status of the important laws in statu nascendi. Of invaluable help to legislators in this process has been the translation of the relevant drafts by CEELI's competent local staff. As one key reformer put it, this close interaction has been facilitated by the "openness of Georgia to American suggestions, the flexibility of the ABA, and the communication skills of the individual ABA liaisons."

CEELI assessment papers are, according to our Georgian interlocutors' of the evaluation team, in their great majority of high quality and, for the most part, tailored to the local needs. The best of them, such as the 1994 paper on the Draft Law on Environmental Protection, the 1996 Draft Law on the Procuracy and the 1997 Draft Criminal Procedure Code, draw on the experts' outstanding substantive credentials as well as their comparative legal background; they assemble a good mix of academics, judges and practitioners, as appropriate, they respond to the local conditions, and they

produce a well-organized and cogent synthesis of the various valuable, sometimes idiosyncratic comments. Less successful were assessments looking at the field of legislation from a purely, or predominantly, domestic U S perspective. Experiences of perceived failures include the 1998 assessment of the draft law on mass media (which has not been passed) and the 1996 comments on the draft law on the bar (an equally unresolved area of contention). In both cases, the written input of the CEELI liaison as to important local conditions was not sufficiently taken into account, and the commentators focused on issues relevant primarily to the U S legal and political environment.

Examples of direct effect of ABA's comments, according to Georgian reformers, include, *inter alia*, (1) the Law on the Procuracy's inclusion of powers of supervision over the Procurator's Office, the augmentation of the role of defense attorneys vis-a-vis the procurator, and the removal of civil cases from the jurisdiction of the Procurator's Office, and (2) the Criminal Procedure Code's integration of adversarial aspects into the traditionally inquisitorial process of criminal justice as well as its system of appeals. If the law of lobbying is passed in its latest draft form, it will include provisions suggested by ABA/CEELI which will increase public access to Parliament and enhance the transparency of the process. Similar beneficial effects have been documented with respect to the draft Freedom of Information Act. Even when ABA/CEELI suggestions were not adopted or substantially modified in the legislative process, they were considered seriously, because they "came from the ABA" -- a professional organization held in high esteem. This input endures. One of the key reformers suggested the preparation of commentaries on the major reform legislation, an effort in which he would welcome continued ABA/CEELI cooperation.

Conclusions

1 ABA/CEELI has met its stated goals by responding in a timely manner to the requests for appraisals of draft legislation. In their great majority, these appraisals are of high quality and usefulness to the Georgian lawmakers. Where they are of lesser value, they emanate from comments by U S experts who focus too much on the American legal context and fail to take into account the particulars of the legal and political situation in Georgia.

2 To its credit, ABA/CEELI has exceeded the narrowly tailored workplan objectives by remaining actively involved throughout the legislative process, communicating continuously with key Georgian reformers, assisting the drafters with English translations of successive versions of the legislation, and, at times, using the media in explicating some of the positions taken. This close involvement with the legislative process has not been seen as intrusive, compulsive, or in any other way violative of Georgian sovereignty or sensitivities. In the eyes of the Georgian interlocutors, ABA/CEELI has been helpful and not pushing a parochial agenda.

3 The impact of ABA/CEELI's assistance in the field of legislation has been remarkable and well documented. The effort has resulted in major improvements in, *inter alia*, the reform of the judiciary, the procuracy, and the process of criminal justice. Where it did not have the effect of being directly incorporated into the law, the ABA/CEELI assessment was seriously considered and discussed. If and when tailored to Georgian needs, ABA/CEELI assessment papers will continue to have enduring impact on both the process of legislation and the process of judicial construction.

Recommendations

1 ABA/CEELI should be encouraged to continue its profound involvement with the Georgian legislative process. Procedurally, it should remain involved with legislation from its inception to possible conclusion and offer its specific expertise and technical assistance in the various phases of lawmaking.

2 Substantively, ABA/CEELI should retain its programmatic focus on the field of reform of the legal infrastructure of Georgia, including legislative activities in the areas of legal education as well as organization and regulation of judges, lawyers, procurators, and other legal professionals. If asked by major decisionmakers to contribute in other areas of legislation, it should provide such services, but endeavor to be involved in the process of legislation in this area from beginning to end.

3 Experts assessing Georgian draft laws should be selected according to their substantive expertise and with a view toward including perspectives from other countries, in particular, the Continental legal experience. ABA/CEELI personnel on the ground should continue to write papers on the context of Georgia as relevant to the proposed legislation. Experts should be urged to take these comments and local factors in general into account when formulating their comments, and the information should be integrated into ABA/CEELI headquarters' synthesis.

4 ABA/CEELI should offer technical assistance in the way of providing assistance to the technical process of drafting legislation, possibly through offering U.S. specialists' expertise in a workshop or providing written materials.

This country report focuses on program evaluation results. Although the team collected data on CEELI's organizational and management structure and performance in each country, these data have been reserved for the inclusion in the final program report.

MANAGEMENT SYSTEMS INTERNATIONAL

ABA-CEELI PROGRAM EVALUATION

DRAFT REPORT

Bosnia and Herzegovina

By

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January 1999

1 0 BACKGROUND AND APPROACH

A This is a brief summary of the findings and conclusions of the USAID commissioned ABA/CEELI program evaluation for Bosnia and Herzegovina (BiH). BiH is the fourth of 10 countries whose programs have been selected by USAID and ABA/CEELI as representative of the various types of programs implemented with USAID support by CEELI since its inception in 1992. The final program evaluation report will cover all CEELI activities from 1992 forward, in all countries where CEELI has been active. This country report is meant to be a summary of findings only. It cannot represent the full seriousness of the rule of law problem in BiH, or the range and intensity of efforts by ABA/CEELI to remedy the situation.

B The team conducted interviews in Sarajevo, Zenica, Mostar and Banja Luka September 15 through Sept 18 1998. Based on a schedule developed by ABA/CEELI, reviewed by USAID, and modified by the team, fifty seven persons were interviewed, including USAID Director Craig Buck, Dep Dir Erna Kerst, Democracy Officer Susan Kosinski, and Project Assistant Jasna Kralic. CEELI local staff and liaisons Mark Dietrich, Nick Mansfield, Heather Ryan, Mary Greer, and Bill Hillock provided extensive briefings on their programs. Michael Hartmann, early 1998 CEELI legal specialist on criminal law, was interviewed by telephone at his residence in California. An exit briefing was given jointly to the USAID and CEELI Directors and subsequently to CEELI liaisons. The team thanks USAID/Bosnia and ABA/CEELI Bosnia for its assistance and cooperation in conducting this evaluation.

Country findings and conclusions presented here are tentative. They will be reviewed and integrated with other country reports as the basis of the final program evaluation report submitted to USAID/ENI. USAID and ABA/CEELI comments on this interim document are welcome.

The report is divided into four sections: Bosnia and Herzegovina Context, CEELI program results, CEELI organization, and issues. It focuses primarily on findings and tentative conclusions. The team does raise management and program issues and concerns that it feels need attention or analysis and decision by CEELI, by USAID, or jointly. Unlike the first three country reports, (Russia, Ukraine and Georgia), the team's relatively short stay in country and the desire to give USAID and CEELI a report soon after departure has dictated a more concise document without formal recommendations.

2 0 CONTEXT

The current BiH judicial system was established in the Washington-Dayton agreements as part of the overall political solution to the ethnic conflict involving Serbs, Bosniacs (Slav-Muslims) and Croats all sharing the territory of BiH. To achieve an end to the hostilities, the Washington-Dayton constitutional structure created a system that assigned authority to various ethnic groups in place, including the judicial system. At higher levels, the accords require ethnic rotation of leadership in order to achieve balance. The vision of Washington-Dayton is the creation of a climate of sufficient trust and cooperation that will allow other more prosaic issues to transcend the ethnic polarization which so marks all political and governmental structures today. In this regard, the judicial system is marked by complexity, an exceptional distribution of judicial power and authority, heavy foreign involvement, inexperienced personnel, poor pay and facilities, extraordinary politicization, and considerable uncertainty about the future. This is compounded by the relative absence of younger, but experienced legal professionals, many of whom left the country, were killed, or have moved into

private practice or into other fields. Legal education is weak, professional associations remaining from the socialist period are moribund, and even the most experienced judges, prosecutors, and advocates are understandably exceedingly risk adverse, uncertain of their authority and reluctant to confront political extremists. Clearly, these extraordinary circumstances inhibit a smooth and rapid transition to the full and deep development of a democratic rule of law regime, with all its elements of judicial independence, professionalism, and commitment to fair, prompt and effective implementation of judgments. Nevertheless, the team concludes that ABA/CEELI, with support from USAID/BiH, in a short time, has achieved results that may prove to be significant for the course of rule of law development in the future.

3 0 CEELI BIH STRUCTURE

ABA/CEELI's BiH office was established by CEELI Director Mark Ellis and Bosnian attorney Sevima Sali 9 months before the Dayton accords became effective in 1995. CEELI's early involvement was a high-risk step signifying the commitment of the US and CEELI to establishing a rule of law regimen in BiH. With a total of \$1 275 million support from USAID over three years, CEELI has placed in BiH six pro bono liaisons and one long term legal specialist. The first liaison was in country for two years, two served for one year, and all three of the current liaisons will be in country for at least one year. A new asset has been created in the Republic Srpska (RS) with the placement of Liaison Bill Hallock in Banja Luka. A second liaison will soon be assigned to the RS.

CEELI liaisons draw upon the CEELI Washington office for management support, and for a variety of ABA informational resources and expertise to reinforce their programs. CEELI Executive Director, Mark Ellis, is considered an expert on the transition to rule of law in the region, and pays frequent visits to BiH. The Country Director for BiH, Nick Mansfield, is also a frequent visitor, and is responsible with the liaisons for the development of work plans, bi-annual reporting, for relationships with USAID, budget development and management, and overall supervision of the program.

Liaisons represent the American Bar Association. They are responsible for implementing a work plan agreed with USAID. They are also charged with expanding and maintaining relationships, providing technical advice and support where needed and requested, organizing joint activities with Bosnian organizations, mobilizing specific US based technical expertise, and for reporting on field activities and accomplishments to USAID and others. Liaisons are pro bono professionals who receive housing, M and IE, insurance and transportation. The direct cost of a liaison in BiH is currently approximately \$32,000 p a. For comparison purposes, the direct cost of contract expert is estimated by USAID to be approximately \$200,000 p a.

4 0 CEELI PROGRAM RESULTS

Goals and Objectives CEELI's main goal in BiH is to strengthen the rule of law and to support the development of an independent and professional judiciary in BiH at all levels. The 1997-98 work plan outlines 11 project objectives, and suggests results measures for each. As objectives change from plan to plan, and as much of CEELI's work can be summarized into several main categories, this report will focus on results, rather than a point by point examination of each sub-objective.

4 1 Forming and developing professional associations

1 CEELI's efforts in helping Bosnian judicial leaders to establish independent professional associations have produced significant results. CEELI has been effective in providing direct organizational assistance, advocacy grants, US study tours, workshops and general moral support to BiH judicial leadership. Specific results are

- The establishment of the Federation Judges Association (AJF) is a major accomplishment. This organization has become the single effective Bosnian voice for judicial independence, improving the stature of the judiciary, and for addressing the challenge of improving the competence and effectiveness of the court system.
- The Association has expanded its membership, transferred leadership through an election and generally taken the lead in collaborating with CEELI for organizing training and workshop programs for all judges.
- The AJF, with close support from CEELI, has prepared a highly regarded proposal for improved procedures and standards for new judicial appointments. This proposal has been submitted to OHR with support from USAID and other elements of the international community.
- The Federation Association of Judges is expanding its membership to all Cantons, thereby increasing the possibility of vertical integration of the judiciary as a profession, in a system otherwise highly decentralized and potentially chaotic.
- In the Republic Srpska, an Association of Judges and Prosecutors (AJPRS) has recently been established. A top priority is to coordinate with the AJF. Two workshops have been co-sponsored by both associations and the presidents have agreed to meet regularly to coordinate priorities for judicial reform in the BiH. With CEELI support, the AJPRS successfully addressed charges of corruption levied by the RS Minister of Justice.
- A Bar Association in Republic Srpska is being strengthened in collaboration with the Swedish Bar Association.
- The AJF has prepared a draft code of ethics that will be presented to the AJF assembly for approval.
- A proposal for the establishment of a non-governmental judicial training institute has been developed with the substantial support of both judicial associations and the support of the international community, including the Council of Europe, OHR, OCSE, and UN. USAID/Bosnia opposes this development as top down, heavily dominated by expatriates, long term, and of low priority; it has requested CEELI to withdraw from active participation. The Council of Europe's Representative's position is that ABA/CEELI withdrawal would send a very bad signal, given the high regard Bosnian and international leaders have for CEELI involvement. CEELI's strongly held position is that the proposal has widespread support, is a logical long-term part of judicial reform efforts, and includes strong Bosnian leadership and control. The main issue appears to be a difference between the USAID mandate to focus on immediate needs and problems and the longer-term institutional development nature of the JTI proposal.

2 **Conclusions** The establishment of an active Judges Association in both the Federation and the RS is a positive result of CEELI efforts. CEELI mobilized the Federation Association for specific projects, media cooperation, criminal law training, development of a judges appointment proposal, demonstrating a capacity to assert a positive influence for judicial independence in a highly charged political situation. More recently, it has made similar progress with the newly established AJPRS. However, both Associations are clearly highly dependent on CEELI, and might well collapse without its continuing support. Efforts to assist the Federation Bar have not borne fruit, but progress is being made in the RS. Considering the Bosnian situation, it is not surprising that much remains to be done to make professional associations independent, effective and sustainable voices for reform. While the judicial training proposal is a logical solution to the need for more systematic approach to continuing training for the judiciary, the team is uncertain whether the proposal is substantially the initiative of the Bosnians, or whether the proposal garners support as an initiative of the international community. It is clear that withdrawal of CEELI support at this stage would substantially weaken the initiative. On the other hand, an effort to establish a training center without the active support and full engagement of a reasonably effective judges association experienced in offering training to its members might not achieve the desired result.

4.2 Results at Cantonal level

1 CEELI has been increasingly active at the Cantonal level and plan objectives at the Cantonal level are being achieved

- Cantonal justice ministries and courts, with the exception of Mostar, are minimally operational. CEELI training programs have contributed to a better understanding of the role of the judiciary at the local level, as well as contributing to increasing the knowledge and skill of judges at this level.
- With substantial involvement by Federation Supreme Court Justices, cantonal level judges legal education programs have been designed and organized, the initial training round on the new criminal code is being implemented under the new ABA/CEELI- DOJ project.
- A fair election of judges was held with CEELI assistance in Central Bosnia Canton, after initial elections violated AJF standards.

2 **Conclusion** CEELI efforts to provide support for Cantonal level justice ministries has created the trust and cooperation necessary to the beginning of what could be a systematic program of Cantonal strengthening, with the Criminal Code training being the first step in this direction. Successful completion of this round could be the foundation for a series of training programs addressing other laws as well as issues relating to more effective functioning of the Cantonal/Municipal court system. CEELI efforts to broker integration and cooperation in Mostar, while receiving high marks for effort from Bosnian and international actors, did not succeed. However, CEELI in collaboration with OSCE and the Council of Europe is the lead activist organization in support of rule of law at the Cantonal level.

4.3 Court Reform at the State and Entity level

1 CEELI has achieved important and specific results through its cooperation with the Federation Constitutional Court, and the Federation Supreme Court. The BiH Constitutional Court has received minor support from CEELI.

- The Federation Constitutional Court is operational, has developed rules of procedure, has heard cases, and made decisions. It has not solved the problem of budget support for its international members, has not yet published and disseminated its decisions, and still needs external support to remain operational. To date, ABA/CEELI is the only foreign organization providing support to the court.
- The Federation Supreme Court is operational, has developed rules of procedure, justices are active partners in judicial reform efforts, and is regarded by other jurists as functioning normally. The importance of Supreme Court leadership and support for judicial independence and professional improvement at lower (Canton) levels is strongly stressed by Canton judicial officials.

2 Conclusion. In less than three years, CEELI's training, procedural advice, limited financial support and substantial personal encouragement has made a significant contribution to the task of implementing the Washington-Dayton agreement with regard to the establishment of an independent judiciary. CEELI assistance has been critical to the Federation Constitutional Court, and for establishing the leadership role of the Federation Supreme Court. Still, Bosnian political conditions are extraordinarily complex and potentially unstable. International support will be needed for judicial reform for some time, and although CEELI can play a role, the Federation Constitutional Court especially now needs adequate regular budget and political support in order to establish a secure place in the judicial process.

4.4 Broader rule of law results

1 CEELI activism and open operational style in BiH has achieved other, sometimes less tangible but still very significant results. The findings below are derived from the near unanimous views of Bosnian and foreign rule of law activists.

- CEELI's early and consistent efforts have raised the level of attention to rule of law issues at OHR and international level generally,
- CEELI has successfully leveraged its limited funding to secure active engagement and support for BiH rule of law projects from other donors, e.g., the Swedish Bar Association, the Council of Europe, and the UN.
- A Law Clinic with two sections, civil law and family law, was established at Sarajevo Law School and began functioning with the 1997-98 summer semester. It is taught by a team of professors and local judges and has received significant interest from students. Due to lack of secured funding, its future is uncertain.
- Through Project Bosnia, CEELI provided computers and start up assistance to RS and Federation legal education.

- Taken first steps to promote inter-entity judicial contact and development of a common working agenda. Seven inter-entity meetings have occurred. CEELI is the only organization supporting this effort.
- Been first to establish rule of law information sharing and voluntary coordination meetings including international officials, foreign NGOs and Bosnian activists.
- Made a major substantive contribution to new Criminal Code (Hartmann), the proposal for judges appointments, the proposal for a Judicial Training Center. Introduced concepts from US criminal procedure directly related to more effective protection of basic procedural and human rights of the accused.
- Projected commitment of American Bar and US legal institutions to actively engage with Bosnians in establishing a democratic rule of law system.

2. Conclusions. Although some results are less tangible than achievement of work plan objectives, in less than three years, ABA/CEELI, with increasing support of USAID/Bosnia, has been an effective American player in an environment largely dominated by European organizations. In some areas, CEELI involvement in such matters of the new criminal law, the proposal for judges appointments, the support for inter-entity cooperation, and the leadership role in information sharing are substantial achievements. Taken together, CEELI has been successful in focusing attention on rule of law issues at the international level, while advancing the interests and capabilities of like-minded Bosnian judicial leaders.

5.0 ABA/CEELI ORGANIZATIONAL STYLE

1. The ABA/CEELI early commitment to rule of law development in BiH helped establish CEELI as a leading source of support at a time when international attention was focused on more dramatic political, security and rehabilitation issues. This, a modest organizational style, and the professional competence of CEELI liaisons has had a remarkable level of impact on Bosnian attitudes, including the potentially hostile RS.

Specific findings are:

- USAID, the various international bodies, and all Bosnians describe CEELI Liaisons as highly professional, committed, hard working and effective representatives of the US legal system.
- While on balance USAID officials were positive about CEELI's work, some concern was expressed that CEELI as an organization was not sufficiently responsive to USAID's desire to achieve greater focus on immediate, high priority issues. Also, USAID commented that CEELI has an attitude "that it (US rule of law efforts) is their program", rather than a program financed by USAID and implemented by CEELI.¹⁸

¹⁸ CEELI's position is that it is responsive, as evidenced by mutually agreed to workplans, monthly reports, and regular meetings with USAID staff. The USAID view may be related to the "long-term vs. short-term" strategy debate discussed previously with response to the JTI proposal.

- European and Bosnian rule of law activists agreed that CEELI, representing the ABA, had achieved a place of influence and partnership which far exceeded their modest operation and their status as still another NGO. This finding is also supported by the feature role given to ABA/CEELI in the most recent OHR report on rule of law development.

2. Conclusions. CEELI's high profile and ability to broker, facilitate and quietly advance a reform agenda in a highly divisive and polarized environment can be explained by several factors. CEELI is transparent in its actions and does not have a specific agenda. It is seen more as a partner than a foreign aid provider. Its liaisons have been professional, competent, and non-bureaucratic. And they have the time and focus to do substantive legal work with the Bosnians, rather than devoting their energies to the maintenance of their own organizational procedures. An important additional factor is the respect Bosnian legal professionals have for the American Bar Association. Unfortunately, CEELI's status and independence has generated some tension in its relationship with USAID officials, who express some exasperation with what they perceive as CEELI's reluctance to accept USAID's operational requirements and overall responsibility for US financed development programs.

6.0 ISSUES, CONCERNS AND SUGGESTIONS

There are several issues that emerged during the course of the interviews that may need the attention of ABA/CEELI and USAID.

- While the general level of interaction between ABA/CEELI and USAID is mostly positive, miscommunications have led to some tension recently. Both sides have taken steps to improve communications. Both may want to develop a more constructive and forthcoming dialogue about future program directions, possibilities and potential problems.
- The activity reporting system needs fundamental review and restructuring with an eye to greater emphasis on priority events, achievement of results, and causal linkages between activities and achievements. The current six month work plan format is a decided improvement over earlier versions, with specified objectives and results indicators. However, the six-month performance report does not revisit the projected work plan objectives and indicators in any systematic way.
- CEELI Bosnia is reaching the point where generalist support for judicial reform needs increasing supplementation with technical expertise in hard nosed institutional development, systematic training of trainers, continuing legal education curriculum development, and in specific technical areas of court administration and information systems.
- One Bosnian official, while appreciating the support CEELI has given to rule of law development, believes that CEELI, and the international community in general, provides too much support to the "establishment", and is too close to the Ministry of Justice and senior judges. In this respondent's view, these officials lack commitment to judicial reform and independence.¹⁹

¹⁹ While this was a view expressed by only one Bosnian, the official was in a unique position to both observe and to try to influence the implementation of the Dayton accords.

- An almost universally supported suggestion is that CEELI find a way to keep liaisons in their field assignments for at least two years. Progress has been made in this regard, but the institutional processes and incentives for long term assignments appear somewhat ad hoc. CEELI may be pushing the outer edge of what is possible through the pro bono assignment principle, and may have to find some additional incentives for keeping otherwise highly qualified liaisons and legal specialists in the field for extended periods. This is a CEELI wide issue, but is related to CEELI's management of its Bosnian operation.

7 0 GENERAL CONCLUSION

The CEELI program in BiH is a highly credible and useful American effort to influence the development of a democratic rule of law in a country where nearly every potentially favorable condition for such development is largely absent. In spite of this, CEELI has achieved observable results and has made good progress toward attainment of many of its objectives. It has been instrumental in raising rule of law development to a much higher priority issue, and has gradually begun to develop a new agenda of common action for judicial reformers and moderates in both the Federation and the Republic Srpska. For a small organization without a large project budget, it has achieved a remarkable level of respect and influence in the international community and in both entities. The successful transition to a democratic rule of law regime and independent judiciary is difficult enough in more stable and less polarized environments in the CEE/NIS area. This transition in BiH will take sustained commitment, guidance, and moral support long after the initial period of stabilization is over. The danger of regression to a "state bureaucratic socialist" norm is ever present, and would do serious damage to the prospects of economic recovery, reconciliation and justice. Whether USAID and ABA/CEELI can find a formula for working together to support the American commitment to rule of law in the future is an important challenge for both organizations, given their differences in mandates and time frames. One thing is certain, the Bosnian associations established, the fragile but positive steps taken toward cooperation and independence, the improvements in judicial professionalism and effectiveness, could easily be lost if there were an early withdrawal of the American presence and support represented by ABA/CEELI.

MANAGEMENT SYSTEMS INTERNATIONAL

ABA-CEELI PROGRAM EVALUATION

DRAFT REPORT

Macedonia

By

**Richard N Blue
Silvy Chernev
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January 1999

1 0 BACKGROUND AND APPROACH

1 1 Background

This is a brief report of the findings and conclusions of the USAID commissioned ABA/CEELI Program Evaluation by MSI for Macedonia. The Former Yugoslav Republic of Macedonia is the fifth of eight countries whose programs have been selected by USAID and ABA/CEELI as representative of the various types of programs implemented with USAID support by CEELI since its inception in 1992. This country report presents major findings and conclusions only. It cannot represent the full achievements of the Macedonian leadership in pursuit of an independent judiciary, or the range and intensity of activities implemented by CEELI in assisting its Macedonian clients. Findings will be synthesized with those from other countries in the final program evaluation report submitted to USAID/ENI. Unlike the team's initial country reports, (Russia, Ukraine and Georgia), the team's relatively short stay in country and the desire to give USAID and CEELI a report soon after departure has dictated a more concise document without formal recommendations. USAID and ABA/CEELI comments on this interim document are welcome.

1 2 Approach

The team conducted most of its interviews in Skopje the week of Sept. 21-25, with one team member visiting the trial court in Veles. Based on a schedule prepared by CEELI and reviewed by USAID, the team interviewed 77 persons, of whom 57 were Macedonians, jurists and activists in legal reform. The team met with USAID Director Stephen Haynes, Dep. Dir. Stephen Szadic, Private Sector Program Officer Stephen Gonyea, and Program Officer Brad Fugimoto. CEELI Liaison Terry Rogers, and Brian LeDuc, CEELI Staff Attorneys Tanja Temelkoska-Milenkovic and Nevenka Ivanovska, and Rick Estridge, Regional Institution Building Advisor, all provided valuable background and program insights during their briefing and throughout the team's stay in Macedonia. The team gave a briefing jointly to USAID and CEELI prior to departure. The team thanks USAID Macedonia and ABA/CEELI for its cooperation and support.

The report is divided into five main sections: Context, CEELI Structure, CEELI program results, CEELI organizational style, and Issues. The team identifies concerns and makes suggestions which CEELI and/or USAID may wish to examine and take appropriate action.

2 0 CONTEXT

After the collapse of the former Socialist Federative Republic of Yugoslavia as a result of a plebiscite held on Sept. 8, 1991, the Republic of Macedonia was declared an independent and sovereign state. Soon afterwards - on Nov. 17, 1991, a new constitution was adopted which became the basis for political and legal changes including a reform in the judiciary. The Government included not only party politicians but a number of experts as well and took a moderate and somewhat 'evolutional' approach to the changes. The leadership of the country chose to use the professional skills of people who had high positions with the former regime rather than turn them into powerful enemies. In general, the political process unlike in most other former Yugoslavian republics has been peaceful and oriented toward gradual reform.

The current judicial system consists of three levels. At the lowest level the so called "Basic Courts" have general jurisdiction as first instance except for some very special matters, while the 3 regional courts (in Skopje, Bitola and Stip) operate as a second level (appellate instance). There is a Supreme court that is a court of cassation designed after the European model. Apart from the regular courts there is a Constitutional court and a special body - the Republican Judicial Counsel that is competent to make proposals for appointment and reappointment of judges.

Although very recently some steps have been made, the courts are still badly in need of administrative reform and computerization. In the past few years many new people have become judges partly because judges went into other branches of the legal profession (private lawyers and legal consultants), and partly because many new positions were created. A process of reappointment of the sitting and appointment of new judges was very carefully and thoughtfully performed. Today all 630 judges have life tenure. However, according to surveys, the public still retains generally negative attitudes to the justice system.

Development of western style associations has been led by the Macedonian Judges Association. It has been a motor for positive changes, achievement of further independence of the judiciary, a substantial improvement in the quality of the work and toward a positive change in the public opinion of the judiciary. The local Association of Lawyers is mandatory and until very recently has been a conservative, old, socialist type organization. There are signs of possible improvement in the face of a newly elected and progressively oriented leadership. The Association of the Macedonian Business Lawyers (comprising about 400 in-house business lawyers and some others) with its 30 years of history has already been able to get reorganized into a modern self-sustainable organization serving its members' needs. The structure and functions of the Public Prosecutor's office are still under debate and there has been little or no reform in this sphere. A recently formed European Law Students Association receives modest support from an otherwise crusty and change resistant Law Faculty.

The Macedonian dedication to reform to some extent is due to the higher level of development of the former Yugoslavian legal framework. It is due mostly to the intelligence and will of the Macedonian leadership to actively pursue reform consistent with the principles underlying the legal systems of modern developed societies. At the same time Macedonians seek to preserve existing positive characteristics of their existing system and also make original contributions of their own.

3.0 CEELI MACEDONIA STRUCTURE

The ABA CEELI office in Macedonia was established in January 1993. The average annual budget provided by USAID Macedonia through the omnibus CEE grant to ABA/CEELI has fluctuated slightly between \$200 and \$300,000 for a five year total of just over \$1 million. The current budget for a four person office is \$318,000 (CHECK). Eleven liaisons have been assigned to Macedonia. The first three liaisons were in country for six months or less. Beginning May, 1994, the average stay of liaisons, with one exception, has been one year. Of the two current liaisons, one will stay for one year, the other for two years. With the exception of a January to May gap in 1994, liaison continuity has been maintained by staggering the appointments of the two liaisons. Liaison Brian LeDuc served on the Zimmer team that assessed Court Administration problems in Macedonia before assuming his liaison responsibilities for the Court Administrative Reform project. Also, Liaison Terry Rogers served as a CEELI liaison in Kryghistan.

Liaisons have been supplemented by ten legal specialists, either in teams or individually who have been recruited to provide more specific technical training, advice or analysis. A good example is the assignment of Idaho University Law School Dean Neil Franklin to develop a clinical legal education program at the Skopje Law School.

A special feature of the CEELI Macedonia office is the presence of two Macedonian attorneys, Tanja Temelkoska-Milenkovic and Nevenka Ivanovska. Both serve as "proto" program officers, as well as providing translation and administrative support. Each is teamed with a liaison to manage one or more major projects, such as the Court Administration development project, as well as having considerable autonomy to manage their own additional projects, such as the English-Macedonian Legal Glossary. Both Macedonian attorneys, but particularly Ms. Temelkoska-Milenkovic contribute to program continuity and to the maintenance of an "institutional memory." Also, both are well known in the Macedonian legal community, and Ms. Ivanovska, as a former government lawyer, has access to many levels of government.

The CEELI Macedonia office is supported by CEELI Washington, which is responsible for financial management, recruitment and supervision of liaisons, work plan development, bi-annual reporting, budget negotiations and relations with USAID/Washington and the with field missions.

Liaisons are pro bono American legal attorneys who must have at least five years practical US experience before being appointed to a position. They are encouraged to pursue language study with CEELI support. Of the current group, Mr. LeDuc is rapidly approaching FSI level 2 proficiency, while Ms. Rogers is just beginning her study. The direct cost of supporting a liaison varies by country, based on housing and M and IE projections. For 1997-98, the average direct cost (air fare, housing and M and IE) of a liaison in Macedonia was approximately \$25,000. Liaisons individually manage a business account that covers a variety of costs associated with specific work plan projects, as well as the costs of operating the CEELI office in Skopje. Two advocacy grants have been made to CEELI partners.

4 0 PROGRAM RESULTS

As with most CEELI programs, the overall goals in Macedonia are to strengthen the independence of the judiciary, develop professional associations, and generally support the development of a rule of law. The Macedonia program quickly evolved from the early stage of holding workshops and responding to information requests about the American legal system, to a more systematic effort to strengthen organizations and build effective continuing and clinical legal education and information systems. The development of a Court Administration project is relatively recent and natural shift toward a concern for effective and efficient implementation of the rule of law.

4 1 Judicial Association Building and Judicial Training

1 The Macedonian Judge's Association (MJA) is a strong organization driven by indigenous initiative and active leadership. It features 99% membership among Macedonian judges, a widespread training program, a highly engaged and diverse board of directors, diverse sources of income and other structural/institutional signs of sustainability. Although the MJA existed prior to CEELI's arrival in Macedonia, CEELI has strengthened the organization since 1994 in critical ways.

- Organizational development assistance has included a grant for office materials, help in leveraging funds from other donors, aiding the MJA in becoming a member of the International Judges' Association, assessing the MJA draft a Code of Ethics, encouraging and assisting in the development and circulation of professional publications, and through the provision of much advice and counsel on how to structure the association's governing operations, including budget management, committee development, democratic selection of leadership, and overall strategic planning
- The MJA has developed an active and successful training program CEELI organized two training of trainers (TOT) program that introduced practice-based teaching methodologies, trained 50 judges of whom approximately 30 have trained other judges, and trained an MJA training coordinator CEELI has also helped MJA conduct scores of seminars Macedonian judges consistently rated these as highly effective and superior to other courses in which lectures are the primary teaching method
- Reflecting the Macedonian-based demand for more institutionalized judicial training, CEELI has led a collaborative effort with the MJA, the MOJ, the Republic Judicial Council (RJC), and the Supreme Court to develop a judicial training center (JTC) proposal to Soros/COLPI The Center is supported in principle by USAID as well CEELI has provided organizational documents and curricula from other JTCs, and organized a study tour for MJA members to visit the JTC in Riga, Latvia The proposal envisions that the JTC operate under the auspices of the MJA, with a board of directors representing the MJA, the Supreme Court, the RJC, and the MOJ The MOJ supports the proposal
- The MJA is lobbying for an independent court budget, and CEELI has helped facilitate the development of a commission within the MOJ to study the issue
- The Republic Judicial Council (RJC), a body created to oversee the selection and appointment of judges, has benefited through provision of legal materials, adoption of rules and criteria for appointment and re-appointment of judges, and development of guidelines for judicial discipline

2 Conclusion The MJA is among the strongest judges' associations seen by the evaluation team in the countries visited It represents an excellent example of how CEELI has responded to the needs of the indigenous legal community by working with it as an equal partner to strengthen it and move it towards sustainability CEELI has guided the MJA through the fundamental steps toward a more independent judiciary by developing a structurally sound association, emphasizing fundraising skills and efforts, building a training agenda that included an early TOT program, promoting an independent court budget, facilitating MOJ support for judicial independence, and institutionalizing judicial training in a way that can be sustained by Macedonians

4.2 Court Administration Reform/Legal Information Access

CEELI liaisons and short-term experts with special skills in court administration have been working to improve and strengthen the Macedonian judicial system by increasing the efficiency of its operations, in part through the development and utilization of modern information resources and technologies

- A 1997 CEELI team spent 2 weeks working with judicial officials from all court levels to assess the status of court administration and design future approaches. The Zimmer report summarizes the team's findings and has since been translated and distributed widely, and is being used as a tool for systematic reform of court administration in Macedonia. A member of the Zimmer team, Brian LeDuc, is currently serving as the CEELI liaison responsible for court administration and has agreed to extend his term for a second year.
- CEELI helped the MJA obtain a USIS grant to equip four pilot basic courts with computers that help process cases efficiently and for a Legal Source Webpage that includes Supreme and Constitutional Court decisions and Macedonian laws.
- The Macedonian Legal Resources Center (MLRC) was established with substantial CEELI support as a citizen's association. Using a CEELI subgrant, the MJA purchased an Internet "router" that enables courts to have dial up access to legal material, gave the router to the MLRC in exchange for providing the judiciary with Internet access. The router allows access for communication (e-mail) and research for the judiciary and the public. The MLRC agreed with the Official Gazette to publish official files on the MLRC website.
- An operational audit of Skopje Trial Court Two conducted by Brian LeDuc has been well received by the Macedonian legal community as well as international donors. The audit demonstrated that the court has reduced backlog, and set forth recommendations on how to improve bankruptcy proceedings.

2 Conclusion CEELI's court administration reform project in Macedonia stands out as a model for introducing and integrating modern technologies that can have widespread and long-term impact for improving judicial efficiency and quality, as well as access to information by legal professionals, students, and the public. While the program still requires much support from CEELI to oversee country-wide implementation, some aspects of it are nearing sustainability, such as the Macedonian Legal Resources Center, created just 8 months ago. The Center also is beginning to serve legal information needs of legal community, law students, and the general public.

4.3 Legal Profession Reform

1 A long-standing goal in CEELI workplans is to help the Macedonian Bar Association (MBA), a mandatory organization for all private attorneys, develop into a Western-style Bar Association that would be responsive to its members and the public. So far, that goal has been unobtainable due to MBA internal problems.

- Recently, a new set of election rules and a new board have produced a progressive shift in leadership. There is evidence that CEELI assisted the reform group in strategizing for this change.
- In past years, the Macedonian Business Lawyer's Association (MBLA) received support from CEELI in the form of materials, translations, brochures, speakers, and seminars. More recently, IDLI has replaced CEELI as MBLA's main partner. One MBLA leader reported that CEELI's assistance fell short of expectations because CEELI was not in a position to provide the level of financial or other resources that the MBLA wanted.

2 Conclusion Although the new MBA leadership is not yet active, there is a high degree of expectation that MBA could become more like a Western bar association CEELI is partially responsible for the change in leadership and direction through its strategic efforts to educate MBA members The evidence is not conclusive as to the success of CEELI's efforts to assist the MBLA

4.4 Legal Education Reform and Law Student Association Development

1 CEELI is charged with assisting the Skopje Law School to develop and implement a law clinic program. After overcoming a long series of obstacles, including conservative attitudes among faculty members, a clinic workplan providing for 7 programs was accepted into the curriculum CEELI has also been working to develop the Macedonian branch of the European Law Students' Association (ELSA)

- Professor Neil Franklin, a CEELI expert on American legal education, conducted a 2.5 month visit to Macedonia during which he worked with Skopje law faculty, in collaboration with the Ministry of Foreign Affairs, the Constitutional Court, the Helsinki Committee, and the Civil Society Resources Center to develop the clinic workplan To date, one of the clinics, in Public International Law, has been implemented, for one semester
- CEELI has assisted members of ELSA to issue brochures on various issues of interest to the general public, such as the institution of the ombudsman, criminal procedure, and alimony and child support With financial support from Soros, CEELI and ELSA are developing a "street law" program to further expand access to legal information by the public

2 Conclusion Given the inertia displayed by faculty members for the establishment of a clinic program, the establishment of one clinic is considered successful By all accounts, Professor Franklin's work and CEELI's support in general is highly regarded and widely appreciated, especially among students The ELSA program is just underway, and will need continuing guidance to insure that materials produced are of a nature to be useful and understandable by the average citizen

4.5 Other Results

1 Two programs highlight CEELI's entrepreneurial approach in this category, both of which have been spearheaded by CEELI liaison Terry Rogers

- CEELI has supported the Humanitarian Association for Emancipation, Solidarity and Equality of Women (ESE), an NGO focusing on education and legal reform beneficial to Macedonia's women CEELI has provided technical assistance to ESE, largely via several seminars and workshops at which lawyers, advocates, and others have been educated by CEELI liaisons and other experts on legal issues related to protection of women's rights CEELI Macedonia coordinated with CEELI Serbia to organize a conference in Struga, Macedonia, for women's lawyers and judges from all of the former republics of Yugoslavia ESE members interviewed highly praise CEELI's professionalism, technical assistance, and the unique value gained from CEELI's expertise on legal issues

- CEELI has forged an informal partnership with Peace Corps Macedonia through which a program for teaching English to judges is being implemented by at least 5 Peace Corps volunteers across the country as secondary assignments. According to the Director of Peace Corps Macedonia, the program took off due to the perseverance and enthusiasm of CEELI Liaison Terry Rogers. USAID has expressed interest in assessing whether Peace Corps might be interested in developing a separate program for English language training to legal professionals, due to the promise of this early initiative.
- CEELI Assessments of several draft laws, the MJA draft Code of Ethics, The law on Salaries, and the Law on Police were well regarded, but the degree of impact depended as much on liaison engagement with the issue as on the quality of the assessment. This finding is consistent with that of other countries visited.

2 Conclusion Assistance to the ESE has been positive and the impact demonstrable, in that ESE members state that without CEELI assistance they would be ignorant about many important legal matters related to women's rights. CEELI should be commended for its entrepreneurial approach to this project, as well as the Peace Corps project, for identifying needs, developing quick and intensive responses, and leveraging additional resources.

5 0 CEELI ORGANIZATIONAL STYLE

1 CEELI programs are effective for three reasons, the energy, skill, and good judgment of the liaisons, the relevance of the material and expert advice provided by CEELI and the ABA, and, most important, the commitment to reform by host country leadership which actively seeks and uses the assistance CEELI liaisons provide. When these factors are in place, as they are currently in Macedonia, USAID's modest financial support and CEELI's liaisons can achieve remarkable results. As a senior USAID officer refreshingly noted, CEELI gives a "big bang for the buck."

CEELI Macedonia has demonstrated smart management and a capacity to make the most of CEELI's potential. Some Findings

- CEELI liaisons are highly regarded as partners, facilitators, brokers and "scroungers" by Macedonians and by the international community. For USAID's small staff, CEELI is a self-starting organization requiring "low maintenance."
- Program continuity has been maintained through a variety of devices, including overlap of assignments, better documentation, and incorporation of Macedonian professionals as program officers.
- CEELI outside experts have been well selected and have achieved results, whether in producing highly valued analyses, conducting training, or establishing a Legal Clinic.
- CEELI Macedonia has demonstrated an unusual ability to produce written analyses of issues and to use those analyses to guide program development. The Gans Report, the Zimmer Report, and the Skopje 2 Court Audit are good examples. The contribution of careful analytic work by CEELI liaisons to good programming cannot be stressed too much, and needs emulation.

- Early emphasis on institutional development and excellent use of CEELI's regional institutional development advisor (five visits) demonstrates that a strong liaison and a tough external advisor can be combined to provide good but sometimes unwanted advice in an effective and diplomatic manner
- The use of Macedonian Staff Attorneys is an excellent move contributing greatly to CEELI's continuity, institutional memory, access, and general ability to understand and help shape Macedonian rule of law developments
- The placement of pro bono liaisons with strong technical skills in management, informatics, court administration and organizational development as well as law is a major plus. Often the liaison's success has more to do with skills other than law
- With only limited "grant funds" of its own, CEELI has managed to leverage significant resources that directly benefit its Macedonian clients, e.g., the Peace Corps English language training, the support from Soros and COLFI. Conversely, lack of a predictable small grant budget sometimes inhibits CEELI from achieving objectives
- CEELI Macedonia has managed to avoid the natural tendency towards "mission creep" inherent in an entrepreneurial type organization, without losing its ability to take advantage of sensible opportunities for synergism and linkage

B Conclusion The CEELI office and program in Macedonia exhibit several traits which, while found in other countries, come together to typify the best of what a CEELI program can accomplish. Surprisingly, this has happened despite a very difficult period of tension between USAID and CEELI, now past, but during which the program was under threat of closure. Today, the relationship with USAID appears by all accounts to be a positive one based on mutual respect and a genuine USAID recognition that CEELI has accomplished a great deal with very limited financial resources. While much of this is a product of a generally positive Macedonian political climate, much can be attributed to CEELI's professionalism and commitment to implementation of its program, despite serious obstacles.

6.0 ISSUES AND SUGGESTIONS

The team has relatively few issues and suggestions, mostly related to ideas about improving and expanding an already effective operation.

- It would be helpful if USAID could find a stable place to locate CEELI's rather broad gauge rule of law program in the architecture of the Mission R4 management structure
- CEELI may want to consider hiring an office administrator as well as a translator, rather than using the Staff Attorneys as translators and administrative assistants. These steps would enhance the Staff Attorney's status and effectiveness in managing CEELI programs in conjunction with the Macedonian legal community.

- The team is very conscious of the constraints on the USAID mission's professional personnel, and its wish to avoid taking on new, high maintenance activities. Nevertheless, to exploit the low cost operation and considerable influence CEELI represents for US interests in rule of law development in Macedonia and to take advantage of the current favorable predilection of the Macedonians to move forward with reform, CEELI and USAID might want to begin to explore carefully the opportunities for a more ambitious program. Areas of expanded support might include

- 1 Consider some USAID financial involvement in the JTC
- 2 Can more be done with the Peace Corp, legal English experiment
- 3 A more systematic and funded program for improving court informatics and administrative structure and process, building on what is underway
- 4 Development of a Commercial Law CLE component with advocacy skills training for the Macedonian Bar Association, perhaps in collaboration with CFED
- 5 Work with NDI to develop a strong legislative drafting and strengthening component. CEELI capabilities in informatics and legal drafting could be brought to bear with NDI's capabilities in legislative procedures and organizational development
- 6 Prosecutors are the missing link in the CEELI program. A strategy should be developed to address their training and development needs, enter DOJ
- 7 An expanded small grant program combined with the level of CEELI access and influence in Macedonian legal circles would constitute a still modest, but powerful tool for a well conceived "guided grant-making" program in support of CEELI's work plan objectives

6.1 Conclusion

CEELI's success in accomplishing much with limited resources is impressive. The team is reluctant to suggest changes in a well knit program. Any expansion would necessarily involve phase down of some current programs as well as securing additional resources. Still, the team is impressed by the level and depth of Macedonian commitment to reform, and by the intelligence with which they have proceeded. The opportunity which presents itself to the United States through USAID, CEELI, NDI and others is to make a major contribution to the development of a truly effective rule of law system, one which actually works to the benefit of economic growth and better justice for the average citizen. Whether this commitment will continue is mainly up to the Macedonians. USAID and CEELI may be better situated than most to lend a hand while the time is still ripe. Court Skopje

DRAFT

MANAGEMENT SYSTEMS INTERNATIONAL

ABA-CEELI PROGRAM EVALUATION

DRAFT REPORT

Poland

By

**Richard N Blue
Sily Chernev
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January, 1999

1 0 BACKGROUND AND APPROACH

1 1 Background

This is a brief country report by the MSI team for the USAID-commissioned ABA/CEELI program evaluation. Poland is the final of eight countries whose programs were selected for evaluation by USAID and ABA/CEELI as being representative of the types of programs implemented with USAID support by CEELI since 1992. This country report presents major findings and conclusions only, and cannot represent the full achievements of the Polish counterparts or the full breadth of CEELI's contribution to the development of rule of law in Poland. Findings and conclusions herein will be synthesized with those from other countries in the final program evaluation report submitted to USAID/ENI. This report is more concise than initial country reports (Russia, Ukraine, and Georgia), and does not present formal recommendations. USAID and ABA/CEELI comments on this interim document are welcome.

1 2 Approach

The team conducted interviews in Warsaw, Opole, Bialystok, Lodz, and Krakow during the week of October 2-9, 1998. Based on a schedule prepared by CEELI, the team interviewed approximately 50 persons, of whom most were Polish stakeholders. The team met with USAID representative William Frej, as well as representatives from the US Embassy. CEELI liaisons Frank Kulbaski and Delaine Swenson, along with Staff Attorney Tomasz Sieniow, provided valuable background information and program insights during their briefing and throughout the team's stay in Poland. The MSI team provided a debriefing to ABA/CEELI staff in Warsaw prior to their departure from the country. USAID was not available for a debriefing. We thank ABA/CEELI and USAID for their cooperation and support.

It is important to note that the evaluation team spent considerable time in Poland evaluating components of CEELI's program there that have received the greatest allocation of resources, and have been deemed the highest priority by USAID and CEELI. These include assistance to the judiciary, especially the judges' association Iustitia, judicial training efforts, the Commercial Law Center (CLC), and the Computer Training Center. Limited time was spent evaluating other components, including legislative assessments, legal profession reform, legal education reform, and assistance to the Institute for Inventiveness. We include a discussion on these lesser-reviewed components in the interest of completeness, although we remind the reader that our facts and conclusions about these components of CEELI's program are based on limited information.

The report is divided into five main sections: Context, CEELI Poland Structure, Program Results, and General Conclusions.

2 0 CONTEXT

USAID's departure from Poland reflects the economic growth and rapid progress that Poland has made since the fall of Communism in 1989. This economic expansion, fueled in large part by US investment, explains the rise in the private commercial law sector and its accompanying demands, such as the need for jurists to understand international legal issues as well as new economic laws, and the need for courts that can accommodate increasingly complex litigation.

In some ways, the legal arena has progressed along with Poland's overall development. A new constitution and many laws have been enacted, lawyers are becoming experienced litigators, and new educational resources are available to legal professionals. In other ways, the legal system has not kept up with the pace of economic and social change. The evaluation team observed that perhaps the weakest link remaining in Poland's legal reform agenda is the judiciary.

Not surprisingly, USAID and CEELI have focused CEELI's program in Poland on two key areas that warrant serious attention: commercial law reform/education, and strengthening the judiciary. Interestingly, while CEELI's work in "Rule of Law" often excludes commercial aspects of the law, as they usually fall under "economic growth" strategic objectives — in the case of Poland it has certainly been appropriate to target economic law as an area requiring assistance. Moreover, the problems of Poland's judiciary are interwoven with commercial law issues since the courts are historically ill-equipped to handle commercial litigation. The team believes that the organizational distinctions between rule of law and commercial law are somewhat artificial, as these areas are interdependent.

Consistent with its broader program goals, CEELI's overarching objective in working with the judiciary in Poland has been to increase judicial independence. This task is a formidable challenge despite Poland's rapid pace of economic development. Like all former Communist states, the judiciary has suffered from a tradition of low status and compensation. Moreover, the notion of an "independent" judiciary is often perceived differently by host-country judges than by well-meaning international providers. Several Polish judges stated that they consider themselves "independent" because their decisions are not influenced. Yet the process continues of establishing independence from control of the MOJ, in terms of both training and funding, both of which are still troubled areas. There is no widespread institutional training for judges, salaries are still low, and courts suffer from insufficient funding for computers, staff, and other resources needed for efficient court administration. In fact, the state of inefficiency and sluggishness evident in the court system has created an environment in which most lawyers will do everything possible to avoid litigation.

Eighty percent of judges are under the age of 35, Poland has faced premature attrition of judges who pass their judicial apprenticeship and eventually move into private practice, where salaries in general are much greater. On the other hand, the evaluation team heard testimony that this trend is subsiding due to an increasingly saturated market for private attorneys, improved judicial salaries, and a slow but steady shift in the perception that judges carry no influence or respect. Apprenticeship programs for judges are highly rated, and judges themselves report higher degrees of professional self-esteem and empowerment.

The evaluation team understands that a key reason for including Poland on the itinerary is that it would provide an opportunity to evaluate a country program that CEELI and USAID are phasing out. Visiting Poland afforded the team the chance to review a CEELI/USAID program from start to finish, looking at such critical issues as whether long-term objectives and goals were met, whether CEELI utilized a strategy from year to year to achieve its objectives, and to what extent sustainable institutions have been left in place that will survive CEELI's presence and continue the work that CEELI began.

3 0 CEELI POLAND STRUCTURE

The ABA/CEELI office in Poland was established in 1992, originating in Warsaw and later extending to Krakow. The Krakow office subsequently closed several years later, and now only the Warsaw office remains. The average annual budget from USAID for Poland has been approximately \$300,000. CEELI has assigned 12 liaisons to Poland, the first arrived in March 1992. For most periods, two liaisons have been in place. There have been no gaps between liaison agreements, with overlap of one to six months being standard. During the 1992-95 phase of the CEELI operations, the average length of stay for liaisons was just under one year. The second phase, 1995 to present, shows a significant increase to almost 22 months, nearly 2 years. CEELI has also posted 13 legal specialists to Poland with an average term in country of just over 2 months. An unusual feature of the current Polish operation is the location of the two liaisons in the offices of CEELI partners. For example, CEELI Liaison Delaine Swenson currently works at the Iustitia-ABC Computer Training Center.

As with other CEELI programs, the CEELI Poland team is managed from ABA/CEELI Washington offices by a country director and program assistant. The country director has responsibilities for both the USAID and DOJ activities, due to the emphasis of the Poland program on criminal law through a joint DOJ/CEELI project which will continue after the phase out of the USAID-funded program in 1999. CEELI's Washington office provides administrative and financial backstopping, personnel recruitment and support, and program development and reporting as required by the USAID cooperative agreement between CEELI and USAID's ENI Bureau.

4 0 PROGRAM RESULTS

Since the beginning of CEELI's program in Poland in 1992, overall goals have included legislative reform through the mechanism of assessments, institutional development of the judge's association, judicial training, commercial law reform and training, legal profession reform, and legal education reform. Like CEELI programs elsewhere, assistance in Poland evolved from the early phase of providing a variety of workshops and legislative assessments to a more targeted strategy aimed at strengthening and educating the judiciary and establishing institutions for educational and research purposes that feature long-term viability.

4 1 Polish Judge's Association (Iustitia)

Iustitia, Poland's only non-governmental judge's association, was established by four judges in 1990 to develop judicial independence and provide judicial education. Since then, the association has grown rapidly. In 1994, when CEELI began assistance to Iustitia, it had about 100 members in three cities. Today, 1,500 of Poland's 6,000 judges belong to Iustitia, in 19 branches, and 18 of 44 voivoid courts are active. The percentage of judges who belong is lower in bigger cities such as Warsaw. Iustitia is generally de-centralized, chapters are mostly self-started and self-governed.

CEELI has contributed to Iustitia's growth in critical ways. Findings are summarized below.

- Marcus Zimmer, a veteran CEELI expert on the judiciary, produced a study that made recommendations on responsibilities for the National Judicial Council (NJC), formed under

the Constitution of 1997. Notably, however, the MOJ still retains authority for judicial education

- CEELI has facilitated a dialogue between the MOJ and Iustitia on development of a judicial training center that also has the support of the NJC. CEELI has been instrumental in the establishment of the newly created Judicial Computer Training Center, which is scheduled to start training judges in Fall, 1998, on use of computers. CEELI helped negotiate a donated facility and funds for training courses with a Polish publishing company, facilitated procurement of computers for the center, and has helped Iustitia apply for grants to provide for continued funding.
- CEELI has worked with the national headquarters, as well as individual Iustitia branches, to help them develop organizational structures, including bylaws, as well as strategies for expansion and strengthening. CEELI helped the National Executive Board design and implement a membership development plan. The most common and successful method of outreach and recruitment, in addition to word-of-mouth, appears to be through Iustitia-sponsored workshops or conferences open to all judges. Several members stated that they joined the association after attending such an event. Obstacles to expansion include over-extended workloads (one reason offered for lower membership in larger cities) and the traditional resistance to participation in associations.
- CEELI has provided sub-grants to establish offices, and has worked steadily with Iustitia on issues related to fundraising and sustainability. For example, CEELI helped the association develop a newsletter and has helped them write grant proposals for continued funding. With CEELI's help, Iustitia set up an office and hired a staff person and legal assistant. A CEELI liaison has been situated at the Iustitia office and has worked there nearly full time for the past year.
- Despite the decentralized nature of Iustitia, members from outlying branches report that they participate in common events with members from other areas, and they consider Iustitia a democratic organization nationally. For example, the latest amendment to Iustitia's Articles of Association went through a serious debate and a solution was adopted through voting, causing no organizational damage.
- CEELI-sponsored workshops and conferences are very highly rated by Polish judges, and have had a far-reaching impact. Over the years, CEELI has employed its usual method of combining high-volume exposure with a range of experts to provide dozens of workshops. In addition to the educational effects from this work, CEELI has helped Iustitia leaders develop the tools and skills needed to organize their own workshops. Several branches are now using the model introduced by CEELI to continue such activities. As noted above, these events have been instrumental in building membership. Several judges noted that Iustitia workshops are superior to the training activities offered by the MOJ, which are available by invitation to only a select number of judges. The Iustitia events, in contrast, are open to the entire judiciary.
- CEELI developed a proposal and secured funding from the U.S. Department of Justice to continue criminal law training through Iustitia that was begun by a CEELI Rule of Law

203

liaison This training will fill a much-needed demand for judges to be educated on aspects of a new criminal code

- In addition to workshops, CEELI has helped Iustitia develop other educational tools, such as brochures on aspects of the law, targeted to laypeople The evaluation team was shown five brochures on basic issues of law and procedure produced by Opole members, and sponsored by CEELI They covered such topics as civil law and procedure, commercial registry, labor law, and family law (divorce and alimony issues) The brochures are available at the registry offices of the courts and contain directions as to what a statement of claims should contain, what taxes and fees are due, what documents should be attached to the statement, etc
- Iustitia members report an enhanced sense of collegia through membership and participation in the association
- There is currently limited formal “lobbying” efforts by Iustitia for improvements in the state of the judiciary, even though CEELI sponsored a workshop on lobbying Some members indicate that this is because the voice of judges has no influence, and therefore it must rely on the National Judicial Council to promote its issues at the national policy level Others reason that lobbying is an unfamiliar concept and therefore undeveloped However, Iustitia has established important contacts with the NJC and due to its efforts, three judges sit on the NJC Through this body, Iustitia is able to provide input on draft legislation and other policy matters, according to Warsaw members
- Dues are collected locally, with a proportion going to central headquarters by each chapter, although the bulk of the revenue remains at the branch level This distribution policy also contributes to the decentralized nature of Iustitia Dues are minimal, yet still prohibitive for many judges given low salaries and general economic hardship It appears that due collection problems have not been because of non-compliance by judges, but rather administrative difficulties that have been largely corrected The evaluation team observed that there are apparently no, or few, benefits provided to due-paying Iustitia members that are not also available to the judiciary at large
- In addition to dues, there is discussion and some debate about other fundraising policies, including whether or not Iustitia should accept contributions from corporations and banks There does not appear to be a position by Iustitia headquarters on this question Another option for raising funds that could possibly be better utilized is implementation of a fee structure for non-members to attend Iustitia-sponsored events Of course, the benefit of this revenue could potentially be equaled with increased membership
- CEELI has helped Iustitia develop a code of ethics

Conclusions CEELI has contributed significantly to expansion and strengthening of a judges’ association that has helped educate the judiciary and helped empower them to pursue greater independence, and has also helped educate the general public As in other countries and aspects of CEELI’s work, much of its impact results from its daily contact and informal counseling, in addition to its more formal assistance, such as organizing workshops and expert visits In view of the

traditional disadvantages endured by the judiciary in Communist times, Iustitia's growth and influence is impressive, and it should be credited with successfully eroding old concepts of powerlessness and passivity. To enhance its influence, Iustitia might consider revising its incentive structure to attract more members, by providing more benefits available to members only, while offering other benefits to non-members for a fee.

4.2 The Commercial Law Center

CEELI set up the non-profit Commercial Law Center Foundation in Warsaw, a consortium of three major bar associations in Poland, the only joint venture initiative among them. Created in 1993, the Foundation consists of the Polish Bar Chamber, the Warsaw Legal Advisors' Association, and the Warsaw Branch of the Polish Legal Association. The Center is located in a building provided by the Polish Bar Association. It features a collection of over 3,000 volumes of legal texts, a CD-ROM collection from Europe and the U.S. on commercial law topics, an internet research site, and frequent workshops on legal issues.

The evaluation team interviewed several practicing lawyers in Warsaw who have utilized the Center's resources, ranging from attorneys with large international firms to sole practitioners, and they all highly rate the Center's resources and activities. Despite the often-cited distinctions between civil code and common law systems, the resources are widely accessed and appreciated, perhaps illustrating that both models offer relevant tools for lawyers in emerging democracies, particularly in the area of commercial or economic law.

The evaluation team also met with members of the Commercial Law Center Foundation.

Highlights of CEELI's assistance to the Center include:

- Facilitated agreement among three founders of the association that would provide for long-term sustainability based on contributions from the three organizations. CEELI is given full credit for brokering an agreement among the three bar associations, who have not cooperated historically, in support of a collaborative effort to start and fund the Center. Members of the Foundation agree that, absent CEELI's involvement, they would not have joined forces in this initiative.
- Established internet web site containing information on legislative and judicial developments, analysis of laws, and other articles. Relationship with Chicago-Kent University was fostered, and memorandum of understanding signed by which the university provided a server and related financial support.
- Highly regarded workshops that have successfully collected fees from participants. Attendees state continued demand for U.S. expertise. Attached to this report is a table of CEELI Poland In-Country Workshops from 1991 to present, many of which were conducted through the Center. As the table illustrates, CEELI has produced nearly 50 workshops for Polish stakeholders on such diverse topics as transactions, franchising, international commercial arbitration, money laundering, and copyright enforcement. Employing its standard approach, CEELI has brought to Poland over the years scores of esteemed lawyers, judges, and other legal professionals from the U.S. for workshop presentations. Poles

205

interviewed by the evaluation team consistently rated CEELI's training activities and workshops as excellent, and are particularly grateful for the access to American legal knowledge and expertise that CEELI has arranged

Conclusions CEELI assistance in establishing and assuring the long-term viability of the Commercial Law Center has been critical. The Center meets a growing demand for training in commercial and economic law, and is the only resource that combines the support of the three major bar associations. It is doubtful that the center would have been created or sustained without CEELI's facilitation and guidance. CEELI training programs and workshops in commercial law topics have been extremely well-received by Poles, once again highlighting one of CEELI's strengths: giving host-country professionals access to American legal knowledge and expertise otherwise unavailable to them.

4.3 Assistance to the Ministry of Finance/Assessments

Since 1992, CEELI has performed many legislative assessments for Poles. The evaluation team had the opportunity to explore one of these projects, ongoing assistance to the Ministry of Finance. CEELI began assistance to the MOF with an assessment on the current insurance code. It has followed up with planned assistance in drafting a new code by one of the experts, Janet Belkin, who was involved in the assessment phase. The expert has already begun providing assistance via fax, phone, and e-mail, and is scheduled to conduct a series of training sessions in the fall of 1998.

The evaluation team interviewed the key Polish recipient of CEELI's assistance to the MOF, the Deputy Director of the Financial Institutions Department. She stated that the CEELI assessment was extremely well-regarded, and the MOF recommended follow-through assistance by Ms. Belkin. The U.S. perspective is highly valued, and CEELI's ability to identify and mobilize relevant experts was noted.

Conclusion CEELI has done outstanding work for the Ministry of Finance, and its successful effort to provide follow-through assistance from one of the assessors of the legislation is commendable.

4.4 Legal Profession Reform

The main source of information for the evaluation team regarding legal profession reform was a short interview with Mr. Ryszard Razny - a former Dean of Krakow's Association of Lawyers. Meetings with other individuals in the legal profession, such as members of the CLC Management Board and the Director of the CLC Foundation, focused on other issues and provided the team with only a general view of the profession and little about CEELI's contribution in this respect.

Mr. Razny reported that CEELI's branch in Krakow, now closed, was active and effective in providing training for apprentice attorneys. CEELI had great impact on young Polish lawyers by giving them knowledge of how to work with foreign investors and especially how to organize and manage a law firm. CEELI succeeded in drawing the new lawyers' attention to the issues of legal ethics, negotiation techniques, the use of technology and computerization, etc. A direct impact of CEELI's work can be seen in the increased number of young lawyers who have started up private law firms and are working successfully with foreign investors on a permanent basis.

It is also worth noting that materials from seminars organized by CEELI on law practice management are considered valuable, and are still in demand by legal professionals years after publication

Conclusion CEELI's impact on enhancing the legal profession is notable, despite the limited information the evaluation team was able to collect. As seen in other countries, knowledge and materials provided by CEELI are well-received and in high demand, not only because of their intrinsic quality, but because of the reputation that the ABA brings to its work as the leading authority on US law and legal matters

4.5 Legal Education Reform

The evaluation team visited a law clinic and human rights center in Krakow associated with Jagiellonian University. Due to travel logistics, the meeting was cut short, and it was difficult to collect much information regarding CEELI's work in this area. We can report, however, that the director of this clinic praised CEELI's organization of a 1-week conference in Warsaw on law clinics. The input of U.S. experts was considered valuable, and the Jagiellonian clinic founders drew upon knowledge acquired from this conference in setting up their program.

In order to collect more information on this subject, the evaluation team is in the process of trying to reach former CEELI Poland liaison Charles Stuckey, who was heavily involved in legal education reform.

Conclusion The extent of CEELI's impact in assisting legal education reform generally was not explored by the evaluation team. Our review was limited to the issue of law clinics, and based on input from one source. Based on the interview conducted, we conclude that CEELI contributed to the establishment of at least one law school clinic by providing well-received information and knowledge from U.S. experts.

4.6 Assistance to the Institute for Inventiveness

In Krakow, the evaluation team had a short meeting with the Director of the Institute of Inventiveness, a legal think tank that provides input to the Polish Parliament on issues related to intellectual property rights. Based on the interview, the evaluation team found the following:

- CEELI helped the Institute provide training sessions to legal professionals on new laws
- CEELI provided the Institute with sub-grants for Internet development
- CEELI wrote and published with the Institute a guide to the Internet based on a similar book by the ABA. This guide is still used and highly rated by Poles
- CEELI contributed to expansion of the Institute's library through provision of materials on US and European laws
- CEELI provided direct technical assistance to the Institute on the substance of various intellectual property laws

According to the Director, CEELI's assistance was superb in content, organization, and follow through.

Conclusion CEELI's support to the Institute of Inventiveness was appropriate, of high caliber, responsive to the needs of the Institute, and the impact of CEELI expertise and technical assistance is still accessed

5 0 GENERAL CONCLUSIONS

CEELI's work in Poland demonstrates the evolution of a typical ABA/CEELI program. In the early years, the emphasis was on sharing American and West European legal expertise through workshops and assessments, as evidenced in the 1994 - 1996 period that was characterized by a program dominated by workshops. This phase evolved into more indigenous programs as time went by, emphasizing local issues and introducing the use of Polish experts. CEELI also expanded its programs to towns and regions outside of Warsaw and Krakow, where its offices were located.

In more recent years, CEELI has turned its attention to supporting institutions such as the Institute for Inventiveness in Krakow, strengthening Iustitia branches and the overall organization to help it identify a long-term strategy and expand its outreach, and toward developing a longer-term plan for the CLC in Warsaw. Iustitia and the CLC will probably need additional support in the coming years, much of which CEELI will be able to provide through its continued presence with DOJ funding. However, the organizations that CEELI has supported in Poland, particularly the CLC, appear to be sustainable, in that they will likely carry on the task of training judges and lawyers in Poland and disseminating much-needed information to legal professionals and the public. Absent CEELI's assistance, Iustitia would likely still be a struggling organization, the CLC would not have developed, and the legal profession in general would be less educated.

Developing the rule of law in societies in transition is a long-term project that requires both time and extensive resources. It would be unrealistic to expect an organization such as Iustitia, starting from essentially ground-zero, to be fully self-sufficient after 5 years of assistance from one USAID provider working on a limited budget — particularly given the enormous obstacles to the organization and independence of judiciaries that formerly Communist countries face, and the sheer size of Poland. That Iustitia has developed to the point where it is today is a tribute to both CEELI and the Polish judges who have shown leadership and dedication in the effort to improve the quality, efficiency, and status of the judiciary. Iustitia will certainly benefit from continued CEELI support, if it is possible.

The evaluation team concludes that, given the modest resources and ambitious objectives directed by CEELI, the program in Poland illustrates CEELI's ability to carry out a well-planned country strategy and leave behind long-lasting and meaningful results that perhaps even exceed initial expectations by USAID. Both USAID and CEELI should be proud of these accomplishments.

ANNEX C

PERSONS INTERVIEWED

PERSONS INTERVIEWED

WASHINGTON, D C

ABA/CEELI

Geoffrey K Bentz, Director, Research and Legislative Assistance
Kyra A Buchko, NIS Program
Simon R Conté, Senior Analyst, Research and Legislative Assistance
Lisa B Dickieson, Director, Central and East European Programs
Mark Dietrich, Consultant
Regina Dobrov, Country Director, The Caucasus
Mark S Ellis, Executive Director
Karin M Krchnak, Western NIS & Environmental Law Programs
Margot Minnini
Kamala Mohammed, Director, Liaison & Legal Specialist Program

Members, CEELI Executive Board

Homer E Moyer, Jr, Miller & Chevalier (Chairman & Co-Founder)
Talbot "Sandy" D'Alemberte, President, Florida State University (Co-Founder)
The Hon Sandra Day O'Connor, U S Supreme Court
The Hon Patricia Wald, U S Court of Appeals, D C Circuit

CEELI Volunteer Interns with Research and Legislative Assistance Program

Lisette Alvarez
Peter Mildenberg
Julie Southfield
Mary Bosworth
Rachel Urden

United States Agency for International Development

Hattie Babbitt, USAID Deputy Administrator
Illona Countryman, Democracy Officer, ENI/DGSR/RLG
Keith Crawford, Democracy Specialist, ENI/DGSR
Patricia Liefert, Democracy Specialist, ENI/DGSR
Tom Nicastro, Chief, USAID/ENI/DG
Howard J Sumka, PhD, Chief, rule of law and Governance Division, ENI/DGSR

U S Agency for International Development -- Procurement Office

Casey Finnerty
Barbara Bocker
Mercedes Stukes

U S State Department

Margo Squire, Director, Democratic Initiatives, Office of Coordinator of NIS Assistance
Jim Doane, Director of Policy and Management, Office of Coordinator of NIS Assistance

Other

Sandra Bloemenkamp, Legal and Institutional Reform Specialist, Poverty Reduction and Economic Management, Europe and Central Asia Region, The World Bank
Malcolm Russell Einhorn, ABT

RUSSIA

USAID/Moscow

Julie Allaire-MacDonald, Deputy Director, Office of Democratic Initiatives and Human Resources
Janet Ballantyne, Mission Director
William Hammink, Director, Office of Democratic Initiatives and Human Resources
Patrick Murphy, Senior rule of law Specialist
Mark S Ward, Regional Legal Advisor & Deputy Director

United States Embassy, Moscow

Abelardo A Arias, First Secretary, United States Embassy
Beverly Lochard, United States Embassy, Legal Division
Monica O'Keefe, USIS, Assistant Cultural Attache, United States Embassy
Prof Nelly Romanova, President, Fund of Environmental Jurisprudence AEPR", Irkutsk

ABA/CEELI Staff, Russia

Paul Backer, Legal Specialist, Commercial Law
Chandlee Barksdale, Director of Training, Institute for International Development
Natalia Danilchenko, Administrative Assistant, Rostov
Prof Evgeniy P Gubin, Faculty of Law, Business Law Department, Moscow State University
Mira Gur-Arie, Legal Specialist, Legal Education Reform, ABA/CEELI
Kristen Hansen, Legal Specialist, Gender Issues
Cheryl Hill, Irkutsk Liaison, ABA/CEELI (telephone interview)
Michael Maya, Country Director
Dmitri B Shabelnikov, Project Coordinator, Interpreter/Translator
Vyacheslav Shilenko, Program Coordinator, Rostov
Vasily A Vlasihin, Resident Attorney
Jonathan Williams, rule of law Liaison, Rostov

ABA/CEELI Russian Partners and Clients, Moscow

Lena Evshova, Coordinator, NIS/US Women's Consortium
Dr Nikolay M Kipnis, Prof & Advocate, Moscow State Legal Academy
Ludmila Korbut, Union of Lawyers
Elena Lvovna, Advocate, Moscow
Natali Malinovskaya, Trial Lawyer, Moscow Central Legal Consultancy
Albert Sarkisian, Deputy Chairman & Executive Director, Russian Energy System
Prof Dr Ekaterina S Shugrina, Head, Legal Department, Altay Academy of Economy and Law, Novosibirsk
Kevin C Smith, Vice President, Freya Corporate Lawyers
Rashid Islamovich Teunaev, President, Collegium of Advocates of the Republic of Karachaevo-Cherkessia

Tatiana Troinova, International Women's Network
Tamara L. Zhivulina, Advocate, Member of Union of Russian Advocates, Nizhni-Novgorod

ABA/CEELI Russian Partners and Clients, Saratov

Marina Nemytina, Project Director, Saratov Legal Reform Project (SLRP)
Alexei Tselovalnikov, Administrative Director, SLRP
A. Demidov, Vice Dean on Educational Process, Saratov State Law Academy
Evgeny Druzin, Judge, Saratov Regional Court
Nina Tsaryova, Chair, Saratov Specialized Collegium of Advocates
Vladimir Kolchenko, Saratov State Law Firm
Tamara Kolchenko, Advocate
Michael Ignatenko, Advocate
Stanislav Zaitsev, Advocate
Oksana Rodionova, Advocate, Gender Program, Specialized Juridical Consultation Bureau of Saratov
Julia Isayeva, Advocate, Gender Program, Specialized Juridical Consultation Bureau of Saratov

ABA/CEELI Russian Partners and Clients, St. Petersburg

Prince Oldenburgsky Higher Law School
Alexey Baykov, Vice Rector and Professor of Business, Civil and Roman Law
Arkady Gutnikov, Director, International Programs
Victor Pronkin, Rector,
Victor Sharygin, Director, Legal Clinic

Jurinfo Center (law firm)

Vladimir Averyanov
Pavel Shtepan,

St. Pete City Collegium of Advocates
Evgeny Semenyako, President
Yaroslav Stasov, Vice President

St. Petersburg International Arbitration Court
Andrei Lavrenov, Assistant to General Director
Alexander Vershinin, General Director

Legal Aid Society for Victims of Sexual Assault
Larissa Kornova
Anna Shukova

ABA/CEELI Russian Partners and Clients, Rostov-on-Don

Dmitry Petrovich Baranov, Chairman of the Presidium, Rostov Region Collegium of Advocates
Dagldyan Knarik Khachaturova, Deputy Chairman of the Presidium, Rostov Region Collegium of Advocates
Svetlana Artemovna Lysko, Advocate, Rostov
Lydia Markina, Advocate, Rostov
Ljudmila Nikolaevna Molodets, Rostov Region Administration, Chief of Legal Department

212

Marina Onosova, Advocate, Head of Women's Organization/Clinic "Sudarinya," Taganrog
Vladimir Pavlovich Pavlov, Chief of Staff, Rostov Regional Legislative Assembly
Lydia Alexeevna Voskobeetova, Dean, Stavropol State Technical University Law Faculty
The Hon Vladimir Vasilevich Zolotykh, Deputy Chief Judge, Rostov Regional Court

UKRAINE

United States Agency for International Development/Kiev

David Black, Project Officer, Office of Democratic and Social Transition
Pamela Mandel, Deputy Director, Office of Democratic and Social Transition
Lea Swanson, Director, Environment and Natural Resources
Roger Yochelson, Director, Office of Democratic and Social Transition

United States Embassy, Ukraine

Julie Fisher, Political Officer

ABA/CEELI Staff, Ukraine

Erin Callahan, Rule of Law Liaison, ABA/CEELI
Olena Dimitrienko, Interpreter
William H Haak, Incoming Environmental Liaison
Karin Krchnak, Country Director, Western NIS (Ukraine, Belarus, Moldova)
Robert Liechty, Rule of Law Liaison
Irina Pokanaj, Legal Assistant
Brian Rohan, Environmental Law Liaison
Slava Simonov, Interpreter
Anne Ziebarth, Environmental Law Liaison

ABA/CEELI Ukraine Partners and Clients, Kiev

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NGO Article 42

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ANNEX D

DOCUMENTS REVIEWED

DOCUMENTS REVIEWED

The list of documents below does not include the voluminous materials received in the field related to each country program, as they are too numerous to list. The team is grateful to ABA/CEELI staff in Washington, D C , and in the field, for their efforts to provide all necessary and relevant documentation for this evaluation.

ABA/CEELI

Grants and cooperative agreements, with amendments and budgets, between CEELI and USAID
Proposals submitted to USAID by CEELI
Workplans for all ABA/CEELI countries
Semi-annual reports by CEELI
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OTHER

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